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A

DIGEST

OF THE

LAWS OF THE STATE OF ALABAMA:

CONTAINING

ALL THE STATUTES

OF

A PUBLIC AND GENERAL NATURE,

IN

FORCE AT THE CLOSE OF THE SESSION OF THE GENERAL
ASSEMBLY, IN JANUARY, 1833.

TO WHICH ARE PREFIXED,

THE DECLARATION OF INDEPENDENCE; THE CONSTITUTION OF THE UNITED STATES;
THE ACT TO ENABLE THE PEOPLE OF ALABAMA TO FORM A CONSTITUTION AND STATE
GOVERNMENT, &C.; AND THE CONSTITUTION OF THE STATE OF ALABAMA.

WITH

AN APPENDIX, AND A COPIOUS INDEX.

COMPILED, UNDER THE AUTHORITY OF THE GENERAL ASSEMBLY,

BY

JOHN G. AIKIN.

PHILADELPHIA:
PUBLISHED BY ALEXANDER TOWAR, 19 ST. JAMES STREET;
AND
FOR SALE BY D. WOODRUFF, TUSCALOOSA, ALABAMA
....
1833.

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PHILADELPHIA:

C. SHERMAN & CO. PRINTERS, 19 ST. JAMES STREET.

INTRODUCTORY NOTICE.

THE following compilation of the Laws of Alabama, embraces all the statutes of a public and general nature in force at the date of its publication, with the exception of those relating to the county boundaries, which it was found impossible to present in an intelligible shape, without the incorporation of many obsolete and local matters, totally incompatible with the scope of the work. It was undertaken early in the year 1832, in discharge of the duties of an appointment conferred by the general assembly for that purpose; and was, with much difficulty, completed in time to be laid before a committee of revision, who assembled at the seat of government, a few weeks before the meeting of the succeeding legislature. The commissioners, after a laborious and minute examination, which resulted in the correction of some redundancies, as well as an obvious and necessary improvement of the phraseology of most of the laws, made their report to the general assembly then sitting, in which they were pleased to notice the performance of the digester, in terms commendatory alike of the plan of the work, and of the scrupulous fidelity with which his task had been executed. The manuscript was afterwards referred to the judiciary committee of the house of representatives, by whom it underwent a cursory examination, without the detection of any errors. In including the acts of the last session, and in expunging from the original compilation, such laws and parts of laws as had ceased to be in force, although the benefit of this revision was necessarily wanting, yet it is believed the requisite means have been employed to ensure accuracy, both by an unremitting diligence on the part of the compiler, and such free recourse to the advice of eminent members of the bench and bar, as prudence recommended in cases of real or supposed difficulty. To attempt an apology, therefore, for any mistakes or deficiencies which may still exist, would seem to be a needless appeal to public courtesy and forbearance; as the errors, if any, are evidently not the offspring of haste or carelessness, but rather of that fallibility which attends every exercise of the human judgment:—errors which no caution can obviate, nor counsel dispel.

As it respects the general plan and arrangement of the work, a circumstance upon which much of its utility must depend, and in which the merits or demerits of the digester will be most conspicuous, I am sensible, that an equal claim to the favorable opinion of the public, is not to be derived from these high testimonials. Of it, every one will judge for himself, and form his own estimate, how far it falls short of that standard of ideal perfection, which might have been more nearly approached, by the concurrence of abler hands and better materials. To win the praise that is due only to a faultless performance, is as far beyond my hopes, as the ability to deserve it would exceed the expectations of others. But yet, when the intrinsic difficulties of the undertaking are impartially weighed: when it is considered how much those difficulties were enhanced in the present instance by the brief time and inadequate powers allowed me, as well as by the great volume and mixed character of our laws, and the seemingly studied confusion in which they were involved, I may surely promise myself, that a slight difference of opinion, will not be hastily magnified into a ground of censure. All experience proves how chimerical is any attempt, even in regard to matters the most simple, to give universal satisfaction:—and when it is observed how much men of acknowledged abilities have differed from each other, as to the models most proper to be followed in similar works, it is but too easy to foresee, that my labors will form no exception to the usual difficulties of the achievement. Indeed, there are few things about which so great a diversity of tastes is likely to be indulged, as what constitutes the standard of excellence in a digest of statute laws. While some can be pleased with nothing which falls short of a strictly scientific method, and a selection confined to the spirit of the enactment, there are others who carry their veneration for the sources of the law so far, as to be willing to make a digest, not so much a receptacle of the law in force, as a history of the legislation of the country—not only a conservatory of the valuable lights which disciplined minds have shed upon the path of jurisprudence, but a servile and unprofitable memento of everything, whether of form or substance, to which inexperience, caprice, or temerity, has lent the casual impress of a legislative sanction. To the former I need scarcely say, that had their fastidiousness been consulted, it would have rendered the work unfit for general use ; while it is hoped the prejudices of the latter will undergo some mitigation from the experience of the last ten years, which sufficiently proves, that laws promulgated in this form are of little more benefit to the public at large, than if they had remained undivulged in the breasts that conceived them. In the middle ground between these extremes, it has seemed to me that the maximum of utility was to be sought for : by discarding all laws not in force, unless when necessary to connect a series of dependent enactments, avoiding all repetition, pruning away, as far as practicable, the redundant verbiage, and arranging the matter thus prepared, rather according to that simple method which common sense suggested, than in subservience to technical rules, which, however they may assist the mind in grasping a subject as an entire whole, are usually productive of more embarrassment than advantage when made auxiliary to any attempt to exhibit it in detail. That it was found much easier to conceive of such a model in theory, than to exemplify it practically, will be readily admitted. The inequality of the materials, necessarily produced corresponding variations in the texture of the work. Passages sometimes occurred which from their generality, and the diversity of subjects embraced in them, seemed to present no peculiar claims to a location under any given title. Others, again, were unintelligible, at least in their true sense, without a reference to laws now obsolete :—and in some instances references were made with so little care that, except on a most thorough research, they could scarcely fail to mislead the inquirer. The defects of arrangement unavoidably arising out of these causes, as well as the inherent obscurity of the text itself, I have endeavored to obviate by explanatory notes. The judicial constructions of the statutes by the supreme court, being the only interpretations which can be safely relied on, and, as far as individuals and inferior jurisdictions are concerned, as imperative as the law itself, are, on all material points, briefly adverted to. The decisions upon the attachment laws, and most of those upon the statutes of *jeofails* are, however, omitted, as they are too numerous even to refer to, and in many instances rendered of difficult application, if not of doubtful authority, the former by recent legislation, and the latter by the rules of proceedings and practice adopted by the supreme court. These rules will be found in an appendix ; and also extracts from the acts of congress of 1790, and 1804, directing in what manner the acts, records, and judicial proceedings of the other states shall be authenticated. The frequent demand for those acts in the courts, and the impossibility of obtaining them on the spur of the moment, in many parts of the state, will, with every member of the bar at least, be a sufficient apology for their insertion.

For the plan of the digest, the process adopted in its composition, and the means employed to bring the whole body of our public statute law into so small a compass without any substantial omissions, those who deem the inquiry worth pursuing, are referred to the subjoined report of the commissioners who collated the manuscript with the originals from which it was compiled. And in concluding this brief notice with a reference to that report, it only remains for me to express, however inadequately, the lively sense of obligation I feel towards the commissioners, for the favorable terms in which they ushered my labors into public notice, and to the legislature, for the courteous and confiding spirit in which those expressions were received. Whether the general voice, on a more deliberate examination, will confirm that judgment, remains to be seen. If it should, I will be gratified:—not because praise or censure can qualify that highest source of self-approval, the conviction of having given my best abilities, and an untiring zeal to the discharge of the duties committed to me, but because it is grateful to all, even the humblest, to know they have escaped from that fatality which, too often, couples good intentions with abortive deeds.

JOHN G. AIKIN.

July, 1833.

REPORT OF THE COMMISSIONERS, EXPLAINING THE PLAN OF THE DIGEST, &c.

To the Senate and House of Representatives of the State of Alabama in General Assembly convened:

THE undersigned, commissioners appointed by the last general assembly, to examine the compilation of laws prepared by John G. Aikin, Esquire, under the act passed for that purpose, ask leave, respectfully, to report, that, within the time prescribed by the act, they entered upon the labor, under a just sense of its responsibility, and with a zeal to perform it, in such a manner as to justify the confidence which their selection indicated.

Influenced by these considerations, they first sought to ascertain if the directions of the act had been complied with, by including in the compilation, all laws now in force, of a public and general nature, and whether they had been faithfully transcribed and arranged under proper heads. In doing this, they had necessarily to take a comprehensive survey of the whole ground which had been passed over, consisting of the voluminous and confused body of our statute laws,—which presented obstacles, at every point, utterly insurmountable within the limited time allowed them, without the aid afforded by the copious notes of the digester, made in preparation for, and during the progress of the work,—from which they have not only derived a signal advantage, but have received a sensible demonstration of the labor it has cost, and of the pains taken to achieve an accuracy, which no memory however retentive could ensure: these, by his leave, are submitted to the legislature, together with the digest, in order that any member who chooses, or any committee to which the work may be referred, may employ them in the collation of laws of different dates upon the same subject, and be enabled thereby to determine, at a comparatively nominal expense of time, the extent to which a law is repealed, modified, or superseded, by another subsequently passed.

This examination embraced a minute and laborious comparison of the manuscript with the printed copy of the law, so determined to be in force, and resulted in the correction of all palpable errors it contained; and by a construction of their powers, perhaps somewhat liberal, the commissioners have in many instances, in addition to those which had attracted the attention of the digester, corrected those redundancies which did not affect, but rather obscured the meaning and force of the law. The arrangement of the law under the head to which its subject matter would naturally refer it, being an object of primary importance and of the greatest difficulty, has received the most scrutinizing attention of the commissioners, and has, with but few exceptions, received also the sanction of their best judgment. They have also faithfully examined the former digest and the acts since passed, respectively, in order that no act or part of an act, which ought to be embraced, should be omitted.

In the index, to which their attention has also been particularly directed, the subjects are so thoroughly digested, that a reference to it will, in every instance it is believed, readily supply any deficiency, which may have become unavoidable in the arrangement of the body of the work, from the complication of the matter in its original form: and the marginal notes are so drawn as to convey a brief and sufficiently accurate outline of the subject matter of the laws to which they respectively refer.

The commissioners deem it essentially included in the duty enjoined upon them, of reporting on the correctness and fidelity with which the digester has performed his task, to state in a concise manner, the plan he has adopted; more especially as, in a work of this nature, where the materials are already furnished, the degree of judgment exercised in giving them form, and in a methodical arrangement of the several parts, is the chief consideration, to which either praise or censure can be attached. In these respects, considering the immense difficulty of the labor, and after the most thorough investigation which time would permit, their judgment approves the whole cast of the work, which seems eminently calculated to secure the two objects, upon which mainly depends its utility, as designed for popular use and general circulation, namely, a freedom from obscurity, and a compression of the materials into the smallest possible space. How far the means which the digester has employed, were adequate to the end, it is believed, will be evident upon a bare recital.

1. In the arrangement of the matter, the constitutional provisions applicable to each head, have, for the sake of more convenient reference, been included; and also, under the title "Alabama," such parts of the acts of congress, as relate to the political history of our state, and show the successive stages of its transition from the Mississippi Territory to a member of the Union.

2. All laws of a temporary nature, and those which have expired by their own limitation, except such parts of them as were conceived necessary, to elucidate those now in force, and to direct their application, are excluded.

3. All laws and parts of laws repealed, and the repealing clauses, are excluded.

4. When two or more laws have, through inadvertency, been enacted on the same subject, (which is frequently the case,) the one which is the most full and clear, is retained, and the others either omitted entirely, or such parts only of the more imperfect ones retained, as were not re-enacted.

5. In some instances much useless and embarrassing repetition is avoided, by consolidating a number of acts into one, as in the times of holding the circuit and county courts, salaries of officers, &c. &c. where the substance of a great variety of acts is brought into the compass of a single page.

6. In setting out the law, all superfluous and inoperative expressions, such as "from and after the passage of this act," and the suspending clauses after they are fulfilled, and the law become absolute by lapse of time, and others, are omitted, and the same license is taken with the phrases at the commencement of each act and section, which were only inserted as a constitutional compliance with legislative forms, while on its passage: the preambles are, however, uniformly retained.

7. In arranging the laws, each section has been transferred to the head, to which it was supposed to have relation, without regard to the matter with which it may have been mingled, at is original passage; and the whole are disposed, rather according to the method required by the sense, than with reference to the dates; and to avoid the space which would be occupied by a repetition of the title to each section, a chronological list is made out at the commencement of the work, showing at one view, every act of a public nature, in force, from the organization of the Mississippi Territory, up to the close of the last session of the legislature, and the date of its passage. The acts of each year are numbered, commencing from the first; and by the number and year each section is referred to in the margin. The advantage of this arrangement is, that while it has enabled the digester to throw the whole body of the law, substantially, into new acts, according to the affinity of the matter, (for each title, excepting only the constitutional provisions, may now be regarded as a separate act,) it also shows what position every section occupied at its original passage, in the act from which it was taken.

In deciding under what title any particular law, or part of a law should be placed, it is believed, that a sound judgment has been exercised—that any law desired will be found under the head at which, if not all, at least most persons would seek for it, without the aid of an index. When, however, it was difficult to decide on the propriety of arrangement, as where a particular law or section seemed referable with equal justice to two heads, its place, where omitted, is supplied by a note showing where it may be found.

To this brief outline of the plan and mode of execution, the commissioners will only add, what appears to them a practical commentary of no small importance, namely: that by these means, the whole body of our public statute law, including all embraced in the former digest, and those of nine subsequent years, are brought without confusion, into the compass of but little more than four hundred pages.

The commissioners think it unnecessary to express in more explicit terms, the sentiment of entire approbation to which a thorough investigation of the work has given rise, believing, that resting upon its own excellence for the meed of praise it may justly claim, from the enlightened approbation of the legislature and the people, it has a surer basis than any which their commendation could supply.

The work is, indeed, the best expositor of its own merits, and to that ordeal they dismiss it; convinced, that while any applause they might bestow would pass away with the moment, the work itself, as often as it serves to bring in contrast the confusion and darkness which have overhung our statute laws heretofore, and the method and harmony with which, it is believed, they are now invested, will yield a testimony to its own worth, too solid to be affected by censure, and too ample to need the augmentation of praise. All which is respectfully submitted.

JOHN BROWN, (*Red*)
R. E. B. BAYLOR,
CASWELL R. CLIFTON.

EXPLANATION OF THE REFERENCES.

The title and date of each law, are indicated in the margin by the year and number which stand opposite to them, in the chronological list of statutes prefixed to the digest. The particular section is also given, except when it coincides in number with the section of the title which it forms. When the marginal reference is enclosed in brackets, it denotes the incorporation of a passage from some other law, usually of a few words, and in no instance extending beyond the commencement of the next section. The small letters direct to the side of the page; the figures, to the bottom; those in parentheses, are appropriated to the decisions of the supreme court. The explanatory notes are framed with reference to the arbitrary division of each title into sections or paragraphs commencing at unity. When the note alludes to a section, without specifying the title, it will of course be understood to be that under which the note occurs.

DECLARATION OF INDEPENDENCE.

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

Propriety of the declaration.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Unalienable rights of the people, &c.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Absolute tyranny the object of the king of Great Britain.

Recitation of injuries and usurpations on the part of the British crown.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained: and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

Petitions for redress unavailing, &c.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Appeal to the British people fruitless, &c.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace friends.

Declaration of Independence.

The colonies absolved from their allegiance, &c.

Mutual pledge of fidelity.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

NEW-HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE ISLAND, &c.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.

Cæsar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge,
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION OF THE UNITED STATES.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.—SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Legislative powers.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Members of house of representatives, how chosen.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Qualification of members of house of representatives.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New York* six; *New Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three.

Appportionment of representatives.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies, how filled.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

H. of rep. to choose their officers—power of impeachment.

SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Senate, how chosen.

Senators classed.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Vacancies, how filled.

Senators' qualification

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Vice president.

4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Senate to choose officers.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

Try impeachments.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment on impeachment.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.

Elections, how held.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Congress assemble annually.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

Elections, how judged. Quorum in senate and house of rep.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Rules.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Journals of each house. Yeas and nays.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either

house, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Adjournment. 4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

Compensation. Privileges. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Members not eligible to office. 2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7.

Revenue bills. 1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Passing bills. Veto. 2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Resolutions, &c. how passed. 3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

Powers of congress.

The congress shall have power—

Taxes.

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

Loans.

2. To borrow money on the credit of the United States:

Commerce.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

Naturalization. Bankruptcies.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

Coin, weights and measures.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

Punish counterfeiting.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

Post offices, &c.

7. To establish post-offices and post-roads:

Science and arts.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

Courts. Punish piracies, &c.

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

Declare war.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Raise armies.

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

Navy.

12. To provide and maintain a navy:

Military law.

13. To make rules for the government and regulation of the land and naval forces:

Call out the militia.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

Organize militia.

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

Exclusive jurisdiction.

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings:—and,

Make all laws necessary, &c.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

Importation of slaves after 1808.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight,

but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas corpus.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Attainder.

3. No bill of attainder, or ex post facto law, shall be passed.

Tax.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No exportation duty.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

Money, how drawn.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles of nobility not allowed.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

Limitations of the powers of the individual states.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.—SECTION 1.

Executive power.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Manner of electing the president and vice president. But see amendments, article 12.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the

persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Who may be elected president.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president, neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In what cases the vice president to act as president.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

President's compensation.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

His oath.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend, the constitution of the United States."

SECTION 2.

President U. States' powers.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons

for offences against the United States, except in cases of impeachment.

Make treaties. Appoint officers.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Vacancies.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

President's duties.

1. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

Officers removable by impeachment.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.—SECTION 1.

Judicial powers and tenure of judges.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

Jurisdiction, extent of.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority: to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state

claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

Whether original or appellate. 2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Trials by jury. 3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed, but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

Treason. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Attainder. 2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.—SECTION 1.

Acts and records of the states. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

Citizens' privileges. 1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from justice. 2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

From service. 3. No person held to service or labour in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION 3.

New states admitted. 1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4.

1. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

Republican form.

ARTICLE V.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Amendments, how attained.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Prior debts of government.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Constitution and treaties, are the supreme law.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Oath to the constitution.

No religious test.

ARTICLE VII.

Ratification. 1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW-HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorman,
Rufus King.

CONNECTICUT.

William S. Johnson,
Roger Sherman.

NEW-YORK.

Alexander Hamilton.

NEW-JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersol,
James Wilson,
Governeur Morris.

DELAWARE.

George Read,
Gunning Bedford, jr.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

Attest,

WILLIAM JACKSON, Secretary.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.*

* March 4th, 1798.

Rights of conscience, freedom of the press, &c.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

Of the right to bear arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

Of quartering troops.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

Of searches, seizures, and general warrants.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

Of indictments, punishments, &c.

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

Of trial in criminal cases, and the rights of a defendant.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

ARTICLE VII.

Of trial in civil cases.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Of bail and fines.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Of rights reserved.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Powers not delegated.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.*

* Dec. 2, 1793.

Of the judicial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.*

* Oct. 17, 1808.

Manner of electing the president and vice president.

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves: They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as president,

the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two-thirds of the whole number of senators; and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

An Act to enable the People of the Alabama Territory to form a Constitution and State Government, and for the Admission of such State into the Union, on an equal footing with the original States.—Passed March 2, 1819.

The inhabitants of Alabama authorized to form a constitution and state government.

To be admitted into the Union.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the inhabitants of the territory of Alabama be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the Union, upon the same footing with the original states, in all respects whatsoever.

Boundaries of the state.

Including islands within six leagues of the shore.

Sec. 2. *And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the north-west corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning.

The line of demarcation between Mississippi and the state to be formed, to be run and cut by the surveyors of lands south of Tennessee and of Alabama; and if it should appear, &c.

Sec. 3. *And be it further enacted,* That it shall be the duty of the surveyor of the lands of the United States south of the state of Tennessee, and the surveyor of the public lands in the Alabama territory, to run and cut out the line of demarcation, between the state of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south, from the north-west corner of Washington county to the Gulf of Mexico, will encroach on the counties of Wayne, Green, or Jackson, in said state of Mississippi, then the same shall be so altered as to run in a direct line from the north-west corner of Washington county to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagola.

Qualified voters to choose representatives to form a constitution.

Sec. 4. *And be it further enacted,* That all white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all persons having, in other respects, the legal qualifications to vote for representatives in the General Assembly of the said territory, be, and they are hereby authorized to choose representatives to form a constitution, who shall be appointed among the several counties as follows:

Appointment of representatives.

Madison. From the county of Madison, eight representatives:
Monroe. From the county of Monroe, four representatives:
Blount. From the county of Blount, three representatives:
Limestone. From the county of Limestone, three representatives:
Shelby. From the county of Shelby, two representatives:
Montgomery. From the county of Montgomery, two representatives:
Washington. From the county of Washington, two representatives:
Tuskaloosa. From the county of Tuskaloosa, two representatives:
Lawrence. From the county of Lawrence, two representatives:
Franklin. From the county of Franklin, two representatives:
Cotaco. From the county of Cotaco, two representatives:
Clarke. From the county of Clarke, two representatives:
Baldwin. From the county of Baldwin, one representative:
Cahawba. From the county of Cahawba, one representative:
Conecuh. From the county of Conecuh, one representative:
Dallas. From the county of Dallas, one representative:
Marengo. From the county of Marengo, one representative:
Marion. From the county of Marion, one representative:
Mobile. From the county of Mobile, one representative:
Lauderdale. From the county of Lauderdale, one representative:
St. Clair. From the county of St. Clair, one representative:
Autauga. From the county of Autauga, one representative:

Election to be holden on the first Monday and Tuesday in May, 1819, &c.

And the election for the representatives aforesaid shall be holden on the first Monday and Tuesday in May next, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations, as prescribed by the laws of the said territory, regulating elections therein for the members of the house of representatives.

Members of the convention to meet at Huntsville on the first Monday in July, 1819, and to determine, &c.

Convention authorized to form a constitution, &c.

Proviso; the government to be republican and not repugnant to the ordinance of 13th July, 1787, so far, &c.

Sec. 5. *And be it further enacted,* That the members of the convention, thus duly elected, be, and they are hereby authorized to meet, at the town of Huntsville, on the first Monday in July next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient, at that time, to form a constitution and state government for the people within the said territory: And if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: *Provided,* that the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the people and states of the territory north-west of the river Ohio, so far as the same has been extended to the said territory, by the articles of agreement between the United States and the state of Georgia, or of the constitution of the United States.

Propositions offered to the con-

Sec. 6. *And be it further enacted,* That the following propositions be, and the same are hereby offered to the convention of the said territory of Alabama, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

vention; to be obligatory if accepted.

First. That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools.

1. Sec. No. 16, in every township, for the use of schools.

Second. That all salt springs within the said territory, and the lands reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used, under such terms, conditions, and regulations, as the legislature of the said state shall direct: *Provided*, the said legislature shall never sell nor lease the same for a longer term than ten years at any one time.

2. Salt springs and lands for working them granted to the state, for the use of the people.

Proviso; the legislature not to sell, nor lease for more than ten years.

Third. That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by congress, from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state, under the direction of congress.

3. Five per ct. of net proceeds of land, sold after 1st Sept. 1819, to be reserved for making public roads, canals, &c.

Fourth. That thirty-six sections, or one entire township, to be designated by the Secretary of the Treasury, under the direction of the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature. And the Secretary of the Treasury, under the direction as aforesaid, may reserve the seventy-two sections, or two townships, hereby set apart for the support of a seminary of learning, in small tracts: *Provided*, that no tract shall consist of less than two sections: *And provided always*, that the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they for ever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by the United States, after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax laid by the order, or under the authority, of the state, whether for state, county, township, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof: and that the lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and that no tax shall be imposed on lands, the property of the United States; and that all navigable waters within the said state shall for ever remain public highways, free to the citizens of said state and of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said state.

4. An entire township for a seminary of learning, together with the one heretofore reserved.

The secretary of the treasury may reserve them in small tracts.

Proviso; no tract less than two sections.

Proviso; irrevocable ordinance disclaiming right to waste lands.

Waste lands at the sole disposal of the United States.

Tract of land sold by the U. States to be exempt from taxes for 5 years.

Lands of non-resident citizens not to be taxed higher, &c.

No tax on U. States' lands.

Water courses.

SEC. 7. *And be it further enacted*, That in lieu of a section of land, provided to be reserved for the seat of government of the said territory,

1620 acres of land for a seat of government, in lieu, &c. by an act, entitled "An Act respecting the surveying and sale of the Public Lands in the Alabama Territory," there be granted to the said state, for the seat of the government thereof, a tract of land containing sixteen hundred and twenty acres, and consisting of sundry fractions and a quarter section, in sections thirty-one and thirty-two, in township sixteen, and range ten, and in sections five and six, in township fifteen, and range ten, and in sections twenty-nine and thirty, in the same township and range, lying on both sides of the Alabama and Cahawba rivers, and including the mouth of the river Cahawba, and which heretofore has been reserved from public sale, by order of the President of the United States.

The state entitled to one representative in congress until the next general census.

SEC. 8. *And be it further enacted*, That, until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

A true and attested copy of the constitution to be transmitted to congress, &c.

SEC. 9. *And be it further enacted*, That, in case the said convention shall form a constitution and state government for the people of the territory of Alabama, the said convention, as soon thereafter as may be, shall cause a true and attested copy of such constitution or frame of government as shall be formed or provided, to be transmitted to congress for its approbation.

CONSTITUTION OF THE STATE OF ALABAMA.

Preamble.

We, the people of the Alabama Territory, having the right of admission into the general government, as a member of the Union, consistent with the constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an Act of congress, entitled "An Act to enable the people of the Alabama Territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states;" in order to establish justice, ensure tranquillity, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following constitution, or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "The State of Alabama." And we do hereby recognize, confirm, and establish the boundaries assigned to said state by the act of congress aforesaid, "to wit: beginning at the point where the thirty-first degree of north latitude intersects the Perdido river, thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the north-west corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning"—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law in consequence of any cession of territory by the United States, or either of them.

ARTICLE I.

Declaration of Rights.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

All freemen are equal.

Sec. 1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

Political power in the people.

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit: and, therefore, they have at all times an unalienable and indefeasable right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

Rights of conscience.

Sec. 3. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

not to be interfered with. Sec. 4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

No person molested. Sec. 5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

Civil rights not affected by religious belief. Sec. 6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished, or enlarged, on account of his religious principles.

No established religion or religious test. Sec. 7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship: and no religious test shall ever be required as a qualification to any office or public trust under this state.

Freedom of speech, &c. Sec. 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Searches. Sec. 9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of accused in criminal cases. Sec. 10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof: to be confronted by the witnesses against him: to have compulsory process for obtaining witnesses in his favour; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed: he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

No person accused, &c. except by law. Sec. 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offence, and legally applied.

Indictable offences, how proceeded against. Sec. 12. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

No person twice tried for same offence. Sec. 13. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use, unless just compensation be made therefor.

Courts to be open, &c. Sec. 14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Laws not suspended but by general assembly. Sec. 15. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

Of bail and fines. Sec. 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Bailable offences. Sec. 17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great: and the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require it.

Debtors when discharged.

Sec. 18. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

No ex post facto laws.

Sec. 19. No ex post facto law, nor law impairing the obligation of contracts, shall be made.

No attaints.

Sec. 20. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

No forfeiture from suicide.

Sec. 21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Assembly of citizens.

Sec. 22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

May bear arms.

Sec. 23. Every citizen has a right to bear arms in defence of himself and the state.

Standing army, &c.

Sec. 24. No standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation of money for its support shall be for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Quartering troops.

Sec. 25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

No titles of nobility.

Sec. 26. No title of nobility, or hereditary distinction, privilege, honour, or emolument, shall ever be granted or conferred in this state; nor shall any office be created, the appointment of which shall be for a longer term than during good behaviour.

Emigration.

Sec. 27. Emigration from this state shall not be prohibited, nor shall any citizen be exiled.

Trial by jury.

Sec. 28. The right of trial by jury shall remain inviolate.

Right of prosecuting, &c.

Sec. 29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself, or counsel.

Enumeration of rights.

Sec. 30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people: and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that everything in this article is excepted out of the general powers of government, and shall for ever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

Distribution of Powers.

Three distinct departments.

Sec. 1. The powers of the government of the state of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Persons belonging to one not to in-

Sec. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of terfere with the others. the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

Legislative Department.

Two branches. Style of laws. SEC. 1. The legislative power of this state shall be vested in two distinct branches: the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama;" and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

Members, how chosen. SEC. 2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer.

Election, when held. SEC. 3. The representatives shall be chosen every year, on the first Monday and the day following in August, until otherwise directed by law.

Qualification of members. SEC. 4. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

Of electors. SEC. 5. Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector; provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this state; and provided, also, that no elector shall be entitled to vote except in the county, city, or town (entitled to separate representation) in which he may reside at the time of the election.

Electors' privileges. SEC. 6. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

Elections by ballot. SEC. 7. In all elections by the people, the electors shall vote by ballot, until the general assembly shall otherwise direct.

Elections, where held. Separate representation of cities or towns. SEC. 8. Elections for representatives for the several counties shall be held at the place of holding their respective courts, and at such other places as may be prescribed by law; provided, that when it shall appear to the general assembly that any city or town shall have a number of white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of white inhabitants therein; which shall be retained so long as such city or town shall contain a number of white inhabitants equal to the ratio which may from time to time be fixed by law; and thereafter, and during the existence of the right of separate representation, in such city or town, elections for the county in which such city or town (entitled to such separate representation) is situated, shall not be held in such city or town; but it is understood, and hereby declared, that no city or town shall be entitled to separate representation, unless the number of white inhabitants in the county in which such city or town is situated, residing out of the limits of said city or town, be equal to

Residuum, how disposed of. Proviso.

the existing ratio; or unless the residuum or fraction of such city or town shall, when added to the white inhabitants of the county residing out of the limits of said city or town, be equal to the ratio fixed by law for one representative; and provided, that, if the residuum or fraction of any city or town, entitled to separate representation, shall, when added to the residuum of the county in which it may lie, be equal to the ratio fixed by law for one representative, then the aforesaid county, city, or town, having the largest residuum, shall be entitled to such representation: and provided also, that when there are two or more counties adjoining, which have residuums or fractions over and above the ratio then fixed by law, if said residuums or fractions, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

Enumeration, when and how taken. Apportionment of representation. General Assembly.

Sec. 9. The general assembly shall, at their first meeting, and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the state, and the whole number of the representatives shall, at the first session held, after making every such enumeration, be fixed by the general assembly, and apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective numbers of white inhabitants; and the said apportionment, when made, shall not be subject to alteration, until after the next census shall be taken. The house of representatives shall not consist of less than forty-four, nor more than sixty members, until the number of white inhabitants shall be one hundred thousand, and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred; provided, however, that each county shall be entitled to at least one representative.

Senate apportioned.

Sec. 10. The general assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the state into the same number of districts, as nearly equal in the number of white inhabitants as may be, each of which districts shall be entitled to one senator and no more; provided, that the whole number of senators shall never be less than one-fourth, nor more than one-third, of the whole number of representatives.

Senatorial districts.

Sec. 11. When a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

Senators, how chosen. Term of service. Qualifications.

Sec. 12. Senators shall be chosen by the qualified electors, for the term of three years, at the same time, in the same manner, and at the same places, where they may vote for members of the house of representatives; and no person shall be a senator unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

Classification of senators.

Sec. 13. The senators chosen according to the apportionment under the census ordered to be taken in one thousand eight hundred and twenty-six, when convened, shall be divided by lot into three classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year, so that one-third may be annually chosen thereafter, and a rotation thereby kept up perpetually. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of members in each class.

House of representatives to choose a speaker. Senate to choose a president. To judge, &c. Contested elections.

SEC. 14. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall, annually, choose a president, and its other officers; each house shall judge of the qualifications, elections, and returns, of its own members: but a contested election shall be determined in such manner as shall be directed by law.

Quorum. Absent members.

SEC. 15. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each house may provide.

Rules.

SEC. 16. Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Punishment for contempt.

SEC. 17. Each house, during the session, may punish, by imprisonment, any person, not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings; provided, that such imprisonment shall not, at any one time, exceed forty-eight hours.

Journal of proceedings. Yeas and nays. Protest.

SEC. 18. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals. Any member of either house shall have liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

Privileged from arrest, &c.

SEC. 19. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer for anything spoken in debate in either house, in any court or place elsewhere.

Vacancies, how filled.

SEC. 20. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

Doors kept open, except when.

SEC. 21. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

Adjournment by consent.

SEC. 22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Bills, how to originate, &c.

SEC. 23. Bills may originate in either house, and be amended, altered, or rejected, by the other; but no bill shall have the force of a law until on three several days it be read in each house, and free discussion be allowed thereon, unless, in cases of urgency, four-fifths of the house in which the bill shall be depending may deem it expedient to dispense with this rule: and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses; provided, that all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

Compensation of members.

SEC. 24. Each member of the general assembly shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

Members not eligible to office.

SEC. 25. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people.

What offices disqualify persons from being members.

SEC. 26. No person holding any lucrative office under the United States, (the office of postmaster excepted,) in this state, or any other power, shall be eligible to the general assembly; provided, that offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or that of the quorum or county court, while it has no salary, shall not be deemed lucrative.

Public defaulters disqualified.

SEC. 27. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

First election, when held.

SEC. 28. The first election for senators and representatives shall be general throughout the state; and shall be held on the third Monday and Tuesday in September next.

First session, when and where held.

Subsequent session.

Removal of seat of government.

SEC. 29. The first session of the general assembly shall commence on the fourth Monday in October next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the general assembly to be held in the year one thousand eight hundred and twenty-five; during that session the general assembly shall have power to designate by law (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed; provided, however, that unless such designation be then made by law, the government shall continue permanently at the town of Cahawba; and provided also, that the general assembly shall make no appropriations previous to the year one thousand eight hundred and twenty-five, for the building of any other state-house than that now provided for by law.

ARTICLE IV.

Executive Department.

Vested in a governor.

SEC. 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Alabama.

Governor, how elected.

SEC. 2. The governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives.

Returns, how made.

Votes, how counted.

Plurality to elect.

Tie.

SEC. 3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses.

Contested elections.

Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

Term of service.

Qualifications.

SEC. 4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the United States, and shall have resided in this state at least four years next preceding the day of his election.

Compensation.

SEC. 5. He shall at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

Commander of militia, &c.

SEC. 6. He shall be commander in chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the general assembly shall fix his rank.

May require information of executive officers.

SEC. 7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

Convening and adjourning general assembly.

SEC. 8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the general assembly.

Give information to general assembly.

SEC. 9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

Execution of laws.

SEC. 10. He shall take care that the laws be faithfully executed.

His powers in criminal cases.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

Seal.

SEC. 12. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and the present seal of the territory shall be the seal of the state, until otherwise directed by the general assembly.

Commissions.

SEC. 13. All commissions shall be in the name, and by the authority of the state of Alabama, be sealed with the state seal, signed by the governor, and attested by the secretary of state.

Secretary of state, his appointment and duties.

SEC. 14. There shall be a secretary of state appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the general assembly; and shall perform such other duties as may be required of him by law.

Vacancies, how filled.

SEC. 15. Vacancies that may happen in offices, the appointment to which is vested in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions which shall expire at the end of the next session.

Governor's powers and duty in relation to bills.

SEC. 16. Every bill, which shall have passed both houses of the general assembly, shall be presented to the governor: if he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that house, it shall become a law: but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each house respectively: if any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law.

Joint resolutions to be passed as bills.

SEC. 17. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the cases of a bill.

Proceedings on impeachment, &c. of governor.

SEC. 18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy, or until the governor absent or impeached shall return or be acquitted.

Who to administer the government.

SEC. 19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall in like manner administer the government.

Compensation.

SEC. 20. The president of the senate and speaker of the house of representatives, during the time they respectively administer the government, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office.

Governor, where to reside.

SEC. 21. The governor shall always reside, during the session of the general assembly, at the place where their session may be held, and at all other times, wherever, in their opinion, public good may require.

Governor not to hold any office.

SEC. 22. No person shall hold the office of governor, and any other office or commission, civil or military, either in this state, or under any state, or the United States, or any other power, at one and the same time.

Treasurer and comptroller, how elected.

SEC. 23. A state treasurer and a comptroller of public accounts shall be annually elected, by joint vote of both houses of the general assembly.

Sheriff, how elected; term of service and qualification.

Vacancies, how filled.

SEC. 24. A sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor, as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years.

Militia.

Militia, how organized. SEC. 1. The general assembly shall provide by law for organizing and disciplining the militia of this state, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States in relation thereto.

Who excused. SEC. 2. Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

Governor may call forth. SEC. 3. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

Officers, how elected. Proviso. SEC. 4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law: Provided, that the general assembly shall not make any such elections or appointments, other than those of adjutants general, and quarter-masters general.

Aids, &c. how appointed. SEC. 5. The governor shall appoint his aids-de-camp; majors general, their aids-de-camp, and all other division and staff officers; brigadiers general shall appoint their aids, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

General assembly to divide militia, and fix rank of staff. SEC. 6. The general assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies: and shall fix the rank of all staff officers.

ARTICLE V.

Judicial Department.

Judicial power, where vested. SEC. 1. The judicial power of this state shall be vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain, and establish.

Powers of the supreme court. SEC. 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: Provided, that the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

Who to be judges of supreme court. Proviso. SEC. 3. Until the general assembly shall otherwise prescribe, the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts within this state: and they, or a majority of them, shall hold such sessions of the supreme court, and at such times as may be directed by law: Provided, that no judge of the supreme court shall be appointed before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five.

Supreme court, where holden. SEC. 4. The supreme court shall be holden at the seat of government, but may adjourn to a different place, if that shall have become dangerous from an enemy or from disease.

SEC. 5. The state shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties: and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed. State to be divided into circuits.

SEC. 6. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this state, not otherwise excepted in this constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars. Jurisdiction of circuit courts.

SEC. 7. A circuit court shall be held in each county in the state, at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so when directed by law. When held.

SEC. 8. The general assembly shall have power to establish a court or courts of chancery, with original and appellate equity jurisdiction; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts respectively: Provided, that the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery. Chancery courts, how established.

SEC. 9. The general assembly shall have power to establish, in each county within this state, a court of probate, for the granting of letters testamentary and of administration and for orphans' business. Courts of probate established.

SEC. 10. A competent number of justices of the peace shall be appointed in and for each county, in such mode and for such term of office as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases, tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law. Justices of peace, their jurisdiction.

SEC. 11. Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this state, the United States, or any other power. Compensation of Judges.

SEC. 12. Chancellors, judges of the supreme court, judges of the circuit courts, and judges of the inferior courts, shall be elected by joint vote of both houses of the general assembly. How elected.

SEC. 13. The judges of the several courts in this state shall hold their offices during good behaviour; and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly; *Provided, however*, that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house; *And provided further*, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively; *And provided also*, that the judges of the several circuit courts who shall be appointed before the commencement of the first session of the general assembly which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-five, shall only hold their offices during good be- Term of service. How removed.

havior, until the end of the said session, at which time their commissions shall expire.*

Age disqualifies.

Sec. 14. No person who shall have arrived at the age of seventy years shall be appointed to, or continue in, the office of judge in this state.

Clerks of courts, how elected. Term of service. Vacancies, how filled.

Sec. 15. Clerks of the circuit and inferior courts in this state shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes and in such manner as may be prescribed by law; and should a vacancy occur, subsequent to an election, it shall be filled by the judge or judges of the court in which such vacancy exists; and the person so appointed shall hold his office until the next general election; *Provided, however*, that after the year one thousand eight hundred and twenty-six, the general assembly may prescribe a different mode of appointment, but shall not make such appointment.

Proviso.

Conservators of the peace.

Sec. 16. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state; as also the judges of the circuit courts in their respective districts, and judges of the inferior courts in their respective counties.

Style of process.

Sec. 17. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name, and by the authority of the state of Alabama, and shall conclude "against the peace and dignity of the same."

Attorney general and solicitors. Term of service and compensation.

Sec. 18. There shall be an attorney-general for the state, and as many solicitors as the general assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

Impeachments.

Who to impeach.

Sec. 1. The house of representatives shall have the sole power of impeaching.

How tried. Who liable. To take an oath. How convicted.

Sec. 2. All impeachments shall be tried by the senate: when sitting for that purpose, the senators shall be on oath or affirmation: and no person shall be convicted without the concurrence of two-thirds of the members present.

Who liable to impeachment. To what extend.

Sec. 3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and to disqualification to hold any office of honor, trust, or profit, under the state; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment, according to law.

ARTICLE VI.

General Provisions.

Oath to be taken.

Sec. 1. The members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and constitution of the state of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of ——, according to law: So help me God."

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* This section was amended in 1830.—See Amendment.

Treason defined.

How convicted.

Sec. 2. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Duelling.

Sec. 3. The general assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to disqualification from office or the tenure thereof, as they may deem expedient.

Bribery.

Sec. 4. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of the state, who shall be convicted of having given or offered any bribe to procure his election or appointment.

Disqualifying laws.

Free suffrage secured.

Sec. 5. Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper conduct.

Elections by general assembly.

Sec. 6. In all elections by the general assembly, the members thereof shall vote *viva voce*, and the votes shall be entered on the journals.

Public money.

Treasurer to make report.

Sec. 7. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

Lands taxed.

Sec. 8. All lands liable to taxation in this state, shall be taxed in proportion to their value.

State may be sued.

Sec. 9. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the state.

Deductions from salary for neglect of duty.

Sec. 10. It shall be the duty of the general assembly to regulate, by law, the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deduction.

Residence, &c.

Sec. 11. Absence on business of this state, or of the United States, or on a visit, or necessary private business, shall not cause a forfeiture of a residence once obtained.

Who disqualified from state offices.

Sec. 12. No member of congress, nor any person holding any office of profit or trust under the United States, (the office of postmaster excepted,) or either of them, or any foreign power, shall hold or exercise any office of profit under this state.

Divorces.

Sec. 13. Divorces from the bonds of matrimony shall not be granted but in cases provided for by law, by suit in chancery: and no decree for such divorce shall have effect until the same shall be sanctioned by two-thirds of both houses of the general assembly.

Libels, how tried.

Sec. 14. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the courts.

Election returns.

Sec. 15. Returns of all elections for officers who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

Establishment of new counties, &c. SEC. 16. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than nine hundred square miles; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of separate representation. Right of suffrage.

Regulation of counties, &c. SEC. 17. The general assembly shall, at their first session which may be holden in the year eighteen hundred and twenty-eight, or at the next succeeding session, arrange and designate boundaries for the several counties within the limits of this state, to which the Indian title shall have been extinguished, in such manner as they may deem expedient, which boundaries shall not be afterward altered, unless by the agreement of two-thirds of both branches of the general assembly; and, in all cases of ceded territory acquired by the state, the general assembly may make such arrangements and designations of the boundaries of counties within such ceded territory, as they may deem expedient, which shall only be altered in like manner: *Provided*, that no county hereafter to be formed shall be of less extent than nine hundred square miles.

Arbitrations. SEC. 18. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment.

Penal code. SEC. 19. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation, and not of vindictive justice.

Digest laws. SEC. 20. Within five years after the adoption of this constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged, under proper heads, and promulgated in such manner as the general assembly may direct: and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years.

Internal improvement. SEC. 21. The general assembly shall make provisions by law for obtaining correct knowledge of the several objects proper for improvement in relation to the navigable waters, and to the roads in this state, and for making a systematic and economical application of the means appropriated to those objects.

SEC. 22. In the event of the annexation of any foreign territory to this state, by a cession from the United States, laws may be passed, extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession; anything in this constitution to the contrary notwithstanding.

Education.

Schools established and encouraged. Schools, and the means of education, shall for ever be encouraged in this state; and the general assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The general assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this state, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a state university, for the promotion of the arts, literature, and the sciences; and it shall be the duty of the general assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

Establishment of Banks.

SEC. 1. One state bank may be established, with such number of branches as the general assembly may, from time to time, deem expedient: *Provided*, that no branch bank shall be established, nor bank charter renewed, under the authority of this state, without the concurrence of two-thirds of both houses of the general assembly; and provided, also, that not more than one bank nor branch bank shall be established, nor bank charter renewed, at any one session of the general assembly, nor shall any bank or branch bank be established, or bank charter renewed but in conformity with the following rules. State bank and its branches, how established.

1. At least two-fifths of the capital stock shall be reserved for the state. Rules.

2. A proportion of power in the direction of the bank shall be reserved to the state, equal at least to its proportion of stock therein.

3. The state, and the individual stockholders, shall be liable, respectively, for the debts of the bank, in proportion to their stock holden therein.

4. The remedy for collecting debts shall be reciprocal, for and against the bank.

5. No bank shall commence operations until half of the capital stock subscribed for, be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.

6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed, by said bank, at the rate of twelve per cent. per annum from the date of such demand, unless the general assembly shall sanction such suspension of specie payments, and the general assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the rights of all concerned, and to declare the charter of such bank forfeited.

7. After the establishment of a general state bank, the banks of this state now existing may be admitted as branches thereof, upon such terms as the legislature and the said banks may agree, subject, neverthelesss, to the preceding rules. Other banks may be admitted branches.

Slaves.

SEC. 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be Regulation of slaves.

continued in slavery by the laws of this state: *Provided,* that such person or slave be the *bona fide* property of such emigrants; and provided also, that laws may be passed to prohibit the introduction into this state of slaves, who have committed high crimes in other states or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect, or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

Sec. 2. In the prosecution of slaves for crimes, of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

Mode of amending and revising the Constitution.

Constitution, how amended, &c.

The general assembly, whenever two-thirds of each house shall deem it necessary, may propose amendments to this constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the secretary of state for the time being, of the names of all those voting for representatives, who have voted on such proposed amendments, and if thereupon it shall appear that a majority of all the citizens of this state, voting for representatives, have voted in favor of such proposed amendments, and two-thirds of each house of the next general assembly shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of this constitution: *Provided,* that the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house.

SCHEDULE.

Change of government not to affect contracts.

Sec. 1. That no inconvenience may arise from a change of territorial to a permanent state government, it is declared that all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no such change had taken place: and all process which shall, before the third Monday in September next, be issued in the name of the Alabama territory, shall be as valid as if issued in the name of the state.

Fines, &c. accrue to the state.

Sec. 2. All fines, penalties, forfeitures, and escheats accruing to the Alabama territory, shall accrue to the use of the state.

Bonds and criminal actions, how prosecuted.

Sec. 3. The validity of all bonds and recognizances, executed to the governor of the Alabama territory, shall not be impaired by the change of government, but may be sued for and recovered in the name of the governor of the state of Alabama and his successors in office: and all criminal or penal actions arising or now depending within the limits of this state, shall be prosecuted to judgment and execution in the name of said state, all causes of action arising to individuals, and all suits at law or in equity, now depending in the several courts within the limits of this state, and not already barred by law, may be commenced in, or transferred to, such courts as may have jurisdiction thereof.

Territorial officers continued until superseded.

SEC. 4. All officers, civil or military, now holding commissions under the authority of the United States or of the Alabama territory, within this state, shall continue to hold and exercise their respective offices under the authority of this state, until they shall be superseded under the authority of this constitution, and shall receive from the treasury of this state the same compensation which they heretofore received, in proportion to the time they shall be so employed. The governor shall have power to fill vacancies by commissions, to expire so soon as elections or appointments can be made to such offices by authority of this constitution.

What laws continued.

SEC. 5. All laws and parts of laws, now in force in the Alabama territory, which are not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this state, until they expire by their own limitation, or shall be altered, or repealed, by the legislature thereof.

Qualification of voters.

Citizens.

SEC. 6. Every white male person above the age of twenty-one years, who shall be a citizen of the United States, and resident in this state at the time of the adoption of this constitution, shall be deemed a qualified elector at the first election to be holden in this state. And every white male person who shall reside within the limits of this state at the time of the adoption of this constitution, and shall be otherwise qualified, shall be entitled to hold any office or place of honor, trust, or profit, under this state; anything in this constitution to the contrary notwithstanding.

President to issue writs of election.

SEC. 7. The president of this convention shall issue writs of election directed to the sheriffs of the several counties, requiring them to cause an election to be held for a governor, representative to the congress of the United States, members of the general assembly, clerks of the several courts, and sheriffs of the respective counties, at the respective places of election in said counties, on the third Monday and the day following in September next, which elections shall be conducted in the manner prescribed by the existing election laws of the Alabama territory; and the said governor and members of the general assembly, then duly elected, shall continue to discharge the duties of their respective offices, for the time prescribed by this constitution, and until their successors shall be duly qualified.

Apportionment of representation.

SEC. 8. Until the first enumeration shall be made, as directed by this constitution, the county of Autauga shall be entitled to two representatives; the county of Baldwin to one representative; the county of Blount to three representatives; the county of Cahawba to one representative; the county of Clarke to two representatives; the county of Conecuh to two representatives; the county of Cotaco to two representatives; the county of Dallas to two representatives; the county of Franklin to two representatives; the county of Lauderdale to two representatives; the county of Lawrence to two representatives; the county of Limestone to three representatives; the county of Madison to eight representatives; the county of Marengo to one representative; the county of Marion to one representative; the county of Monroe to five representatives; the county of Montgomery to three representatives; the county of Mobile to one representative; the county of St. Clair to one representative; the county of Shelby to two representatives; the county of Tuskaloosa to three representatives; and the county of Washington to two representatives. And each county shall be entitled to one senator, who shall serve for one term.

Oaths of office, by whom administered. SEC. 9. The oaths of office, herein directed to be taken, may be administered by any justice of the peace, until the general assembly shall otherwise direct.

ORDINANCE.

Convention accept the conditions of the act of congress admitting the state into the Union. THIS convention, for and in behalf of the people inhabiting this state, do accept the propositions offered by the act of Congress, under which they are assembled; and this convention, for and in behalf of the people inhabiting this state, do ordain, agree, and declare, that they for ever disclaim all right and title to the waste or unappropriated lands lying within this state; and that the same shall be and remain at the sole and entire disposition of the United States, and, moreover, that each and every tract of land, sold by the United States after the first day of September next, shall be and remain exempt from any tax, laid by the order or under the authority of this state, whether for state, county, township, parish, or any other purpose whatsoever, for the term of five years from and after the respective days of sales thereof, and that the lands belonging to the citizens of the United States, residing out of the limits of this state, shall never be taxed higher than the lands belonging to persons residing therein, and that no tax shall be imposed on lands the property of the United States; and that all navigable waters within this state shall for ever remain public highways, free to the citizens of this state and of the United States, without any tax, duty, impost, or toll therefor, imposed by this state: and this ordinance is hereby declared irrevocable, without the consent of the United States.

Done in convention at Huntsville, this second day of August, in the year of our Lord one thousand eight hundred and nineteen, and of American Independence the forty-fourth.

J. W. WALKER,
President of the Convention.

Attest,
JOHN CAMPBELL, *Secretary.*

AMENDMENT TO THE CONSTITUTION, ADOPTED JANUARY 16, 1830.

Joint Resolution ratifying the proposed amendments to the Constitution of the State of Alabama, so as to limit the tenure of the Judges' offices to six years.

Preamble. WHEREAS, the general assembly of this state, at the last session of the same, duly submitted to the people of the said state, a proposed amendment to the constitution of the said state; and whereas the people of this state, in the manner and form as provided by the constitution of this state, have accepted the said amendment, which is in the words and figures following:

Recital of proposed amendment.

Be it resolved by the senate and house of representatives of the state of Alabama in general assembly convened, That the following amendments to the constitution of the state of Alabama, be proposed to the people of said state, which, when agreed to by a majority of all the citizens of said state, voting for representatives, and ratified by two-thirds of each house of the next general assembly, voting by yeas and nays, shall be valid to all intents and purposes whatever, as a part of the constitution of the state of Alabama, to wit: Strike out the thirteenth section of the fifth article, and insert in lieu thereof the following: "The judges of the several courts of this state shall hold their offices for the term of six years; and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however*, that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house: *And provided further*, That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively: *And provided also*, that the judges now in office may hold their offices until the session of the general assembly which shall be held in the year one thousand eight hundred and thirty-three, and until their successors shall be elected and qualified, unless removed by address or impeachment:"

Judges' term of service.

How removed.

Proviso.

Further proviso.

Ratification.

Therefore, Be it resolved by the senate and house of representatives of the state of Alabama in general assembly convened, Two-thirds of each house concurring, that the aforesaid amendment to the constitution, proposed as aforesaid, and accepted by the people as aforesaid, be ratified, and that the same, from and after the passage of this resolution, be and form a part of the constitution of the state of Alabama.

JOHN GAYLE,
Speaker of the House of Representatives.

LEVIN POWELL,
President of the Senate.

A LIST

OF

THE ACTS OF CONGRESS INCLUDED IN THIS DIGEST.

An Act for an amicable settlement of limits with the state of Georgia, and authorizing the establishment of a government in the Mississippi Territory.—April 7, 1798.

An Act supplementary to an act, entitled "An Act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee."—March 27, 1804.

An Act to enlarge the boundaries of the Mississippi Territory.—May 14, 1812.

An Act to establish a separate territorial government for the eastern part of the Mississippi Territory.—March 3, 1817.

An Act to enable the people of the Alabama Territory to form a constitution and state government; and for the admission of such state into the Union on an equal footing with the original states.—March 2, 1819.

A

DIGEST

OF

THE LAWS OF ALABAMA.

1

A LIST OF THE STATUTE LAWS,

OF A

PUBLIC AND GENERAL NATURE,

From the Organization of the Mississippi Territory, to the close of the Session of the General Assembly for the year 1832, *now in force, either wholly or in part, in the State of Alabama.*

ARRANGED CHRONOLOGICALLY, AND NUMBERED.

YEAR AND NUMBER.

TITLE AND DATE.

1799: (1) An Act concerning defalcation.—February 28, 1799.
1801: (1) An Act to restrain idle and disorderly persons.—December 5, 1801.
1802: (1) An Act for the limitation of actions, and for avoiding vexatious lawsuits.—February 2, 1802.
(2) An Act to prevent suits from abating on the death of either party.—May 13, 1802.
1803: (1) An Act to prevent unlawful hunting, and for other purposes.—February 10, 1803.
(2) An Act concerning notaries public.—February 10, 1803.
(3) An Act respecting conveyances.—March 4, 1803.
(4) An Act for the more easy partition of lands held by coparceners, joint-tenants, and tenants in common.—March 4, 1803.
(5) An Act concerning divorce and alimony.—March 10, 1803.
(6) An Act for the suppression of vice and immorality.—March 12, 1803.
(7) An Act to prevent frauds and perjuries.—November 18, 1803.
(8) An Act creating the offices, and defining the duties of territorial and county treasurers.—1803.
1804: (1) An Act to prevent the evil practice of duelling.—November 11, 1804.
1805: (1) An Act regulating the solemnization of marriages.—January 5, 1805.
(2) An Act empowering courts of equity to proceed against absent defendants.—February 1, 1805.
(3) An Act concerning forcible entries and detainers.—February 10, 1805.
(4) An Act respecting slaves.—March 6, 1805.
(5) An Act to prevent the liberation of slaves, only in cases hereafter named, and for other purposes.—July 20, 1805.
1806: (1) An Act concerning wills and testaments; the settlement of intestates' estates; and the duty of executors, administrators and guardians.—February 10, 1806.
(2) An Act for the appointment of an auditor of public accounts, ascertaining his duties in office, and for other purposes.—March 1, 1806.

YEAR AND NUMBER. **TITLE AND DATE.**

1807: (1) An Act to render promissory notes and cotton receipts negotiable, and for other purposes.—1807.
(2) An Act to prevent trespasses in certain cases, and declaring what shall be deemed a lawful enclosure.—1807.
(3) An Act prescribing the duties of constables.—1807.
(4) An Act concerning counsel and attorneys at law.—1807.
(5) An Act concerning strays, and for improving the breed of horses.—1807.
(6) An Act for the punishment of crimes and misdemeanors.—1807.
(7) An Act respecting oaths of office.—1807.
(8) An Act directing the method of proceeding in courts of common law and equity, against absconding debtors and other absent defendants.—1807.
(9) An Act concerning bail in civil cases.—February, 1807.
(10) An Act concerning the marks and brands of cattle and other stock.—February, 1807.
(11) An Act *to prevent the importation of distempered cattle into this territory*.—February, 1807.
(12) An Act to prevent the evil practice of gaming.—Feb. 4, 1807.
(13) An Act establishing weights and measures in the Mississippi territory.—February 4, 1807.
(14) An Act establishing the fees of the several officers therein named, and for other purposes.—February 6, 1807.
(15) An Act more particularly to define the duties of the auditor of public accounts and territorial treasurer, and for other purposes.—February 6, 1807.
(16) An Act directing the manner of employing proper guards for the safe keeping of criminals in the several counties of this territory, and for other purposes.—February 6, 1807.
(17) An Act regulating the mode of summoning juries, and for other purposes.—February 6, 1807.
(18) An Act to provide for the more effectual administration of justice.—February 7, 1807.
(19) An Act establishing superior courts, and declaring the powers of the territorial judges.—February 10, 1807.
(20) An Act for the appointment of justices of the peace, and the establishment of county courts.—February 10, 1807.
(21) An Act concerning executions, and for the relief of insolvent debtors.—February 10, 1807.
(22) An Actcon cerning executions.—February 10, 1807.
(23) An Act for the settlement and relief of the poor.—Feb. 10, 1807.
(24) An Act to assist poor persons in their suits, and to enable infants to sue by their next friends.—February 10, 1807.
(25) An Act to direct the building and establishing a court-house, jail, pillory, whipping-posts, and stocks, in every county.—February 10, 1807.
(26) An Act for the well regulating of jails.—February 10, 1807.
(27) An Act for the more effectual preservation of personal liberty.—February 10, 1807.
(28) An Act establishing the place where the officers therein named shall keep their respective offices.—February 10, 1807.
(29) An Act to prevent the importation and spreading of the small-pox, and other contagious diseases.—February 10, 1807.
(30) An Act respecting sheriffs and coroners.—February 10, 1807.
(31) An Act to regulate taverns and restrain tippling-houses.—Feb. 10, 1807.

YEAR AND NUMBER. TITLE AND DATE.

1807: (32) An Act concerning witnesses.—February 10, 1807.
(33) An Act concerning juries.—February 11, 1807.
1808: (1) An Act prescribing the mode of collecting and accounting for fines and forfeitures, and for other purposes.—January 26, 1808.
(2) An Act supplementary to an act concerning public roads, and for other purposes.—March 1, 1808.
1809: (1) An Act concerning cotton gins.—March 3, 1809.
(2) An Act to raise a revenue.—December, 1809.
(3) An Act establishing patrols.—December 5, 1809.
(4) An Act to amend the several laws now in force, respecting prison-bound bonds.—December 7, 1809.
(5) An Act to amend an act entitled "An Act for the settlement and relief of the poor."—December 18, 1809.
(6) An Act supplementary to "An Act concerning wills and testaments; the settlement of intestates' estates; and the duty of executors, administrators and guardians."—December 22, 1809.
(7) An Act respecting runaway slaves committed to jail.—Dec. 22, 1809.
(8) An Act respecting the auditor of public accounts, and the territorial treasurer.—December 23, 1809.
(9) A Resolution relative to tax-collectors.—December 23, 1809.
1810: (1) An Act to amend an act entitled "An Act concerning cotton gins."—November 27, 1810.
(2) An Act concerning navigable streams within this territory.—November 27, 1810.
(3) An Act fixing the time of holding the intermediate courts, extending the powers of the chief justice of the orphans' court, and for other purposes.—December 3, 1810.
(4) An Act to amend an act entitled "An act to prevent the evil practice of gaming."—December 3, 1810.
(5) An Act to amend an act entitled "An act for the appointment of an auditor of public accounts, ascertaining his duties in office, and for other purposes."—December 3, 1810.
1811: (1) An Act to empower securities to recover damages in a summary way.—December 7, 1811.
(2) An Act to amend an act entitled "An act respecting conveyances."—December 7, 1811.
(3) An Act regulating the mode of drawing and summoning jurors.—December 7, 1811.
(4) An Act to encourage the building of public mills, and directing the duties of millers.—December 7, 1811.
(5) An Act supplementary to an act to amend the act entitled "An act allowing compensation to the several public officers therein mentioned, and for other purposes."—December 9, 1811.
(6) An Act concerning county surveyors.—December 11, 1811.
(7) An Act concerning bastardy.—December 13, 1811.
(8) An Act to amend the act for the punishment of crimes and misdemeanors.—December 16, 1811.
(9) An Act concerning tax-collectors.—December 16, 1811.
(10) An Act to amend an act entitled "An act to prevent the evil practice of gaming."—December 17, 1811.
(11) An Act regulating judicial proceedings in certain cases, and for other purposes.—December 18, 1811.
(12) An Act granting original jurisdiction to the judges of the superior courts in certain cases.—December 18, 1811.

YEAR AND NUMBER.	TITLE AND DATE.
1811:(13)	An Act concerning writs of error, and for other purposes.—December 18, 1811.
(14)	An Act to amend an act creating the offices and defining the duties of territorial and county treasurers, and for other purposes.—December 18, 1811.
1812: (1)	An Act (no title given.)—1812.
(2)	An Act to amend an act entitled "An act to regulate taverns and restrain tippling-houses."—November 18, 1812.
(3)	An Act to provide for the recovery of rent in certain cases not heretofore provided for.—December 11, 1812.
(4)	An Act concerning drovers.—December 14, 1812.
(5)	An Act to amend an act entitled "An act to encourage the building of public mills, and directing the duties of millers."—Dec. 14, 1812.
(6)	An Act prescribing the mode of paying the expenses incurred for the safe-keeping of persons committed to the jail of any county within the territory, charged with any crime cognizable before any court within the same.—December 14, 1812.
(7)	An Act providing a tax for county purposes, and to reduce the territorial taxes.—December 17, 1812.
(8)	An Act concerning the assignment of bonds, notes, &c. and for other purposes.—December 18, 1812.
(9)	An Act to amend an act entitled "An act establishing patrols, and for other purposes."—December 18, 1812.
(10)	An Act to amend the act for the punishment of crimes and misdemeanors.—December 21, 1812.
(11)	An Act concerning the distribution of intestates' estates.—December 21, 1812.
(12)	An Act to amend and reduce into one, the several acts to prevent the evil practice of gaming.—December 21, 1812.
(13)	An Act to amend an act respecting conveyances.—Dec. 22, 1812.
(14)	An Act concerning dower.—December 22, 1812.
(15)	An Act regulating the mode of collecting money by execution.—December 23, 1812.
(16)	An Act making further regulations in judicial proceedings.—December 24, 1812.
(17)	An Act authorizing executors and administrators to make titles to real estate sold by their testator or intestate.—December 24, 1812.
(18)	An Act to amend and reduce into one, the several acts regulating elections.—December 24, 1812.
(19)	An Act to prevent frauds in certain cases, and for other purposes.—December 24, 1812.
(20)	An Act concerning the clerks of courts, and to reduce into one, the several laws regulating officers' fees, and more particularly to define the same.—December 24, 1812.
(21)	An Act amendatory to an act entitled "An act prescribing the mode of collecting and accounting for fines and forfeitures."—December 24, 1812.
(22)	An Act fixing the compensation of the members and officers of the general assembly, and for other purposes.—December 24, 1812.
1814: (1)	An Act to amend the attachment law.—January 15, 1814.
(2)	An Act to amend "An act prescribing a summary mode for the trial of slaves."—January 15, 1814.
(3)	An Act providing in what manner distillers of spirituous liquors shall be authorized to dispose of the same.—January 15, 1814.

YEAR AND NUMBER. TITLE AND DATE.

1814: (4) An Act to regulate the several courts in this territory, and to create a supreme court of errors and appeals.—January 20, 1814.

(5) An Act for the relief of the several tax-collectors.—Jan. 20, 1814.

(6) An Act concerning jurors, and for other purposes.—Jan. 22, 1814.

(7) An Act to extend the jurisdiction of justices of the peace.—January 22, 1814.

(8) An Act for the relief of securities in certain cases.—Dec. 1, 1814.

(9) An Act to prevent obstructions in the navigable waters in this territory.—December 1, 1814.

(10) An Act authorizing county treasurers to pay jurors.—Dec. 1, 1814.

(11) An Act reducing the rate of tavern licenses, and for other purposes.—December 2, 1814.

(12) An Act to amend an act entitled "An act to regulate the several courts in this territory, and create a supreme court of errors and appeals."—December 22, 1814.

(13) An Act to authorize the governor of the Mississippi territory to accept of services of citizens exempted from military duty.—December 22, 1814.

(14) An Act to amend an act entitled "An act to amend an act entitled an act for the punishment of crimes and misdemeanors," passed the twenty-first of December, eighteen hundred and twelve.—December 24, 1814.

(15) An Act concerning fugitives from justice.—December 24, 1814.

(16) An Act to authorize tax-collectors and other officers to publish advertisements in any public newspaper of this territory.—December 24, 1814.

(17) An Act to revise, consolidate, and amend the several acts relative to justices of the peace and constables.—December 27, 1814.

(18) An Act to amend an act entitled "An act to reduce into one and amend the several militia laws of this territory."—Dec. 27, 1814.

(19) Resolution directing the territorial treasurer to perform certain duties.—December 27, 1814.

1815: (1) An Act concerning the clerks of courts.—November 29, 1815.

(2) An Act concerning slaves brought into this territory contrary to the laws of the United States.—December 8, 1815.

(3) An Act to amend the act entitled "An act to prevent the liberation of slaves, only in cases hereafter named, and for other purposes."—December 19, 1815.

(4) An Act to amend an act entitled "An act for the appointment of justices of the peace, and the establishment of county courts."—December 19, 1815.

(5) An Act concerning jurors, and for other purposes.—Dec. 20, 1815.

(6) An Act to amend the act entitled "An act concerning wills and testaments, the settlement of intestates' estates, and the duty of executors, administrators, and guardians."—December 23, 1815.

(7) An Act additional to an act entitled "An act making further regulations in judicial proceedings."—December 23, 1815.

(8) An Act concerning prisoners.—December 23, 1815.

(9) An Act concerning incorporated towns.—December 23, 1815.

(10) An Act concerning weights and measures.—December 23, 1815.

(11) An Act supplementary to an act, entitled "An Act to amend and reduce into one the several acts regulating elections."—December 27, 1815.

(12) An Act to regulate judicial proceedings.—December 27, 1815.

(13) An Act making appropriations, &c.—December 27, 1815.

YEAR AND NUMBER. TITLE AND DATE.

1815:(14) An Act to promote health, by preventing the sale of unwholesome liquors and provisions.—December 27, 1815.

(15) An Act to raise a revenue.—December 27, 1815.

1816: (1) An Act concerning stays on executions, and regulating the fees of certain officers therein named.—January 12, 1816.

(2) An Act to amend an act, entitled "An Act to regulate taverns, and restrain tippling-houses."—November 27, 1816.

(3) An Act to prevent the sale of spirituous liquors to Indians.—December 6, 1816.

(4) An Act to amend the act entitled "An Act concerning bastardy."—December 7, 1816.

(5) An Act to amend the act concerning escheated property.—December 10, 1816.

(6) An Act to authorize executors and administrators to sell property of a testator or intestate, to complete payment for lands purchased of the United States.—December 12, 1816.

(7) An Act to compel executors, guardians, and administrators, to settle their accounts.—December 12, 1816.

(8) An Act establishing the fees of the clerk of the supreme court of errors and appeals.—December 12, 1816.

(9) An Act concerning writs of error.—December 12, 1816.

(10) An Act concerning injunctions.—December 12, 1816.

(11) An Act to amend the "Act concerning surveyors."—Dec. 12, 1816.

(12) An Act regulating judicial proceedings in certain real and possessory actions, and for other purposes.—December 13, 1816.

(13) An Act to amend an act entitled "An Act for the limitation of actions, and for avoiding vexatious law-suits."—December 13, 1816.

(14) An Act to amend an act entitled "An Act to reduce into one, and amend the several militia laws of this territory," approved the twenty-second day of January, eighteen hundred and fourteen. —December 13, 1816.

1818: (1) An Act to abolish the right of survivorship in all cases.—February 4, 1818.

(2) An Act for the better regulation of judicial proceedings.—February 7, 1818.

(3) An Act concerning writs of error.—February 10, 1818.

(4) An Act to amend and alter the laws for the punishment of crimes and misdemeanors.—February 13, 1818.

(5) An Act to amend an act entitled "An Act against usury."—February 13, 1818.

(6) An Act to authorize the change of venue in real actions.—February 13, 1818.

(7) An Act to amend the militia laws, and for other purposes.—February 13, 1818.

(8) An Act concerning oaths of office.—February 13, 1818.

(9) An Act for the government of gin-holders, and for other purposes.—November 16, 1818.

(10) An Act to restrain the issuing of small notes, commonly called change-bills.—November 17, 1818.

(11) An Act authorizing county courts to grant private ways in certain cases.—November 19, 1818.

(12) An Act to make lawful and obligatory certain marriages therein named. November 19, 1818.

(13) An Act to authorize deeds of conveyance to be acknowledged, and rights of dower to be relinquished before clerks of courts.—November 21, 1818.

YEAR AND NUMBER. TITLE AND DATE.

1818: (14) An Act supplemental to the laws now governing judicial proceedings —November 21, 1818.

(15) An Act to authorize the governor of the territory to offer rewards for the apprehension of criminals.—November 21, 1818.

(16) An Act to regulate sales at auction.—November 21, 1818.

(17) An Act concerning hawkers and pedlers.—November 21, 1818.

(18) An Act concerning the style of writs.—1818.

1819: (1) An Act prescribing the manner in which the oath of office shall be administered to the governor of this state, and certain other officers therein named.—November 9, 1819.

(2) An Act excluding from suffrage, serving as jurors, and holding offices, such persons as may be convicted of bribery, forgery, perjury, and other high crimes and misdemeanors.—November 27, 1819.

(3) An Act to prevent the obstruction of the navigable water-courses in this state.—December, 1819.

(4) An Act providing for the determination of suits and controversies by arbitration.—December 13, 1819.

(5) An Act affixing salaries to certain officers within the state of Alabama. —December 13, 1819.

(6) An Act to regulate the proceedings in the courts of law and equity in this state.—December 14, 1819.

(7) An Act to alter and amend the laws regulating the admission and practice of counsellors and attorneys at law.—December 16, 1819.

(8) An Act to regulate elections, establish certain precincts in the counties therein named, and for other purposes—Dec. 16, 1819.

(9) An Act prescribing the duties of certain public officers.—December 17, 1819.

(10) An Act supplementary to " An Act regulating the proceedings of the courts of law and equity in this state," passed the present session of the general assembly.—December 17, 1819.

(11) An Act to prevent the frauds and fraudulent combinations in the sale of the public lands within this state.—December 17, 1819.

(12) An Act to authorize justices of the peace to receive the due acknowledgment and probate of deeds, and relinquishment of dower. —December 17, 1819.

(13) An Act to suppress duelling.—December 17, 1819.

(14) An Act to provide for the appointment of county officers, and for other purposes.—December 17, 1819.

(15) An Act to regulate the rate of interest.—December 17, 1819.

(16) An Act to provide for leasing for a limited time, the lands reserved by the congress of the United States, for the support of schools, within each township in this state, for a seminary of learning, and for other purposes.—December 17, 1819.

(17) An Act to incorporate, and empower religious societies of every denomination to hold real estate.—December 17, 1819.

(18) An Act to regulate patrols, and for other purposes.—December 17, 1819.

(19) An Act to fix the compensation of the members of the general assembly, and for other purposes therein named.—December 17, 1819.

(20) An Act to lease certain salt springs.—December 17, 1819.

(21) An Act specifying the causes and manner of removing clerks.—December 17, 1819.

(22) An Act to amend the several acts relating to assessors and collectors of the public revenue.—December 17, 1819.

YEAR AND NUMBER. TITLE AND DATE.

1819:(23) An Act for the inspection of lumber, and certain other articles therein named.—December 17, 1819.

1820: (1) An Act to amend an act passed at Huntsville on the sixteenth day of December, 1819, entitled, "An act to alter and amend the laws regulating the admission and practice of counsellors and attorneys at law."—November 24, 1820.

(2) An Act to provide for the public printing, and for other purposes.—November 30, 1820.

(3) An Act authorizing and requiring the keepers of the several jails in the state, to receive and keep persons committed under the authority of the United States.—November 30, 1820.

(4) An Act concerning writs of error.—December, 1820.

(5) An Act to amend an act to regulate elections, establish certain precincts in the counties therein named, and for other purposes—passed on the sixteenth of December, 1819.—December 4, 1820.

(6) An Act to authorize the governor to dispose of the public arms of the state.—December 7, 1820.

(7) An Act to point out the duties of owners and keepers of water-mills who grind grain for toll.—December 9, 1820,

(8) An Act to amend an act entitled "An act providing for the determination of suits and controversies by arbitration," passed at Huntsville, December 13, 1819.—December 11, 1820.

(9) An Act supplementary to the several acts in relation to highways, bridges, and ferries.—December 12, 1820.

(10) Resolution providing for the preservation of the state records.—December 16, 1820.

(11) An Act for the collection of moneys due the state, and for other purposes.—December 16, 1820.

(12) An Act to amend an act passed December 23, 1815, fixing a standard for measures.—December 16, 1820.

(13) An Act for the relief of securities.—December 18, 1820.

(14) An Act to establish a state university.—December 18, 1820.

(15) An Act to prevent obstructing or diverting from the natural channel, any water-course which would otherwise flow through the land of any person.—December 18, 1820.

(16) An Act giving jurisdiction to the courts of certain counties.—December 20, 1820.

(17) An Act to authorize the judges of the circuit courts and justices of the county courts to take the acknowledgments of deeds and relinquishments of dower.—December 20, 1820.

(18) An Act to legalize registering certain deeds or conveyances of land in this state.—December 20, 1820.

(19) An Act concerning executions and sales by sheriffs, and for other purposes.—December 20, 1820.

(20) An Act supplementary to the laws now in force, concerning wills, intestates, and guardians.—December 20, 1820.

(21) An Act to regulate the proceedings in suits at common law.—December 20, 1820.

(22) An Act giving jurisdiction over water-courses.—December 20, 1820.

(23) An Act to amend an act to provide for leasing for a limited time, the lands reserved by the congress of the United States, for the support of schools within each township of this state, for a seminary of learning, and for other purposes.—December 20, 1820.

(24) An Act to authorize persons who have settled on the sixteenth section

YEAR AND NUMBER.	TITLE AND DATE.
	in each township, to remove mill-works or machinery, and for other purposes.—December 20, 1820.
1820:(25)	An Act to organize the militia of this state.—December 20, 1820.
(26)	An Act concerning the appointment of county officers.—December 20, 1820.
(27)	An Act to amend an act entitled "An act for the inspection of lumber, and certain other articles therein named," passed at Huntsville on the seventeenth day of December, 1819.—December 20, 1820.
(28)	An Act to alter and enlarge the terms of certain circuit courts in this state.—December 21, 1820.
(29)	An Act concerning divorce.—December 21, 1820.
(30)	An Act to reduce into one the several acts concerning strays.—December 21, 1820.
1821: (1)	Resolution to regulate elections by the general assembly of the state.—1821.
(2)	An Act to authorize licensed ministers of the gospel, to solemnize the rites of matrimony.—June 13, 1821.
(3)	An Act to amend an act to alter and amend the laws regulating the admission and practice of counsellors and attorneys at law.—June 14, 1821.
(4)	An Act to repeal in part and amend an act entitled "An act to regulate the proceedings in the courts of law and equity in this state."—June 14, 1821.
(5)	An Act to authorize executors, administrators, and guardians, to relinquish land under the act of congress, passed the second day of March, 1821, and for other purposes.—June 14, 1821.
(6)	An Act supplementary to an act making appropriations for the year one thousand eight hundred and twenty-one, and for other purposes.—June 15, 1821.
(7)	An Act amendatory to the laws now in force for the relief of insolvent debtors.—June 15, 1821.
(8)	An Act to reduce the expenses of the general assembly, and for other purposes.—June 15, 1821.
(9)	An Act for the relief of the master builders and mechanics of the state of Alabama.—June 15, 1821.
(10)	An Act to repeal part of an act therein named, and for other purposes.—June 16, 1821.
(11)	An Act to incorporate the most-worshipful grand lodge of ancient freemasons of Alabama, and its masonic jurisdiction.—June 16, 1821.
(12)	An Act supplementary to an act entitled "An act to organize the militia of this state," passed at Cahawba, December 20, 1820, and for other purposes.—June 16, 1821.
(13)	An Act imposing a tax on non-resident and transient persons, making sale of goods, wares and merchandise in this state.—June 16, 1821.
(14)	An Act concerning persons residing on the University lands, and who have not rented the same, and for other purposes.—June 18, 1821.
(15)	An Act to amend an act giving jurisdiction to certain counties therein named, over that part of the Cherokee lands lying within the limits of the state of Alabama.—November 27, 1821.
(16)	An Act to prevent sheriffs and other officers from levying executions in certain cases.—November 27, 1821.
(17)	An Act to amend and repeal a part of the second section of an act to authorize the governor to dispose of the public arms of this

YEAR AND NUMBER. TITLE AND DATE.

state, passed on the seventh day of December, 1820.—November 28, 1821.

1821:(18) An Act authorizing a lottery for the making of a turnpike road, leading from the city of Mobile to Chickasaw Bogue Creek, in the county of Mobile, and for other purposes.—December 3, 1821.

(19) An Act to regulate the mode of issuing grants and patents in this state.—December 6, 1821.

(20) An Act supplementary to an act entitled "An act to suppress duelling," passed on the 17th December, 1819.—December 6, 1821.

(21) An Act to fix the time for convening the general assembly of the state of Alabama.—December 6, 1821.

(22) An Act respecting rents.—December 12, 1821.

(23) An Act to form a sixth judicial circuit, and for other purposes therein mentioned.—December 13, 1821.

(24) An Act to repeal in part and amend an act entitled "An act to constitute a court of oyer and terminer for the trial of slaves, and for other purposes.—December 13, 1821.

(25) An Act more effectually to enforce the acts of the general assembly of the 21st December, 1820, and of June the 14th, in relation to roads in this state.—December 15, 1821.

(26) An Act supplementary to an act entitled "An act for the relief of securities."—December 15, 1821.

(27) An Act in relation to the banking institutions of this state.—December 17, 1821.

(28) An Act to repeal in part and amend an act entitled "An act to repeal in part and amend an act entitled, An act to regulate the proceedings in the courts of law and equity in this state," passed the fourteenth day of June last.—December 17, 1821.

(29) An Act for the punishment of malicious mischief.—Dec. 17, 1821.

(30) An Act concerning writs and executions.—December 17, 1821.

(31) An Act to abolish the fictitious proceedings in ejectment, and for other purposes therein mentioned.—December 17, 1821.

(32) An Act concerning jurors, and for other purposes.—Dec. 17, 1821.

(33) An Act to alter and amend the several acts now in force organizing the militia of this state.—December 17, 1821.

(34) An Act to provide for assessing and collecting the taxes of this state.—December 17, 1821.

(35) An Act prescribing the manner of changing the venue in criminal cases, and for other purposes.—December 18, 1821.

(36) An Act supplementary to an act to establish a state university.—December 18, 1821.

(37) An Act to repeal in part and amend the *forty-third* section of an act to organize the militia of this state, passed 20th December, 1820.—December 18, 1821.

(38) An Act to amend the law regulating proceedings upon the claims of property under execution.—December 19, 1821.

(39) An Act to alter and amend the militia laws of this state.—December 26, 1821.

1822: (1) An Act to prevent frivolous and vexatious law-suits.—Dec. 1822.

(2) An Act to prevent immoral and disorderly conduct at places of religious worship.—December 10, 1822.

(3) An Act concerning the judges of the county court.—Dec. 12, 1822.

(4) An Act to authorize the governor of this state to remit all or part of any forfeiture which has or may accrue to this state.—December 12, 1822.

YEAR AND NUMBER. TITLE AND DATE.

1822: (5) An Act to suppress the evil and pernicious practice of fire-hunting.—December 12, 1822.

(6) An Act the better to secure debts upon writs of error.—December 12, 1822.

(7) An Act concerning intestates' estates.—December 14, 1822.

(8) An Act concerning inquiry of damages.—December 19, 1822.

(9) An Act for the trial of the right of property taken by virtue of an execution or attachment, and claimed by any person not a party to the suit.—December 20, 1822.

(10) An Act to divide the state into districts for electing representatives to congress.—December 21, 1822.

(11) An Act to continue in force and amend an act entitled "An act to repeal in part and amend an act entitled, An act to regulate the proceedings in the courts of law and equity in this state," and for other purposes therein mentioned.—December 24, 1822.

(12) An Act to repeal in part the statute of limitations in criminal cases.—December 24, 1822.

(13) An Act to compel clerks of circuit and county courts to give bond and security within the time therein prescribed.—December 24, 1822.

(14) An Act to repeal in part and amend an act entitled "An act supplementary to an act to establish a state university."—December 24, 1822.

(15) An Act to provide for the printing of the laws and journals, and for other purposes.—December 25, 1822.

(16) An Act giving execution for costs in the supreme court.—December 26, 1822.

(17) An Act to prevent free negroes and mulattoes from retailing spirituous liquors, and for other purposes.—December 26, 1822.

(18) An Act to authorize administrators to sell land belonging to the estate of their intestate, to which a complete title has not been obtained.—December 27, 1822.

(19) An Act to authorize fathers to devise the custody and tuition of their infant children.—December 28, 1822.

(20) An Act to enforce the payment of moneys collected by officers of courts.—December 28, 1822.

(21) An Act to prescribe the mode of certifying executions from justices of the peace, from one county to another.—December 28, 1822.

(22) An Act providing for the election of sheriff in certain cases, and for other purposes.—December 28, 1822.

(23) An Act concerning writs of error *coram vobis*.—December 30, 1822.

(24) An Act to authorize the judges of the county courts and commissioners of roads and revenue within this state, to make an allowance therein named.—December 30, 1822.

(25) An Act for the preservation of the several court houses in this state.—December 31, 1822.

(26) An Act relative to turnpike roads.—December 31, 1822.

(27) An Act to authorize a change of venue in chancery cases in certain cases.—December 31, 1822.

(28) An Act to provide for the election of justices of the peace and constables.—December 31, 1822.

(29) An Act to revise, consolidate, and amend the several acts relative to the militia of this state.—December 31, 1822.

(30) An Act relative to the securities of clerks, sheriffs, and other officers.—December 31, 1822.

YEAR AND NUMBER. TITLE AND DATE.

1822: (31) An Act appointing an agent to receive the *three per cent.* fund.—December 31, 1822.

(32) An Act for the regulation of assessors and collectors, so far as relates to the payment of money.—December 31, 1822.

(33) An Act authorizing the judge of the county court of Mobile county, to appoint a public weigher in the city of Mobile.—December 31, 1822.

1823: (1) An Act to regulate proceedings in chancery suits.—January 1, 1823.

(2) An Act to provide for leasing the sixteenth sections, and for the application of the funds arising therefrom to the purposes of education.—January 1, 1823.

(3) An Act to carry into effect the laws of the United States, prohibiting the slave trade.—January 1, 1823.

(4) An Act to set apart a separate fund for the support of the poor in each county.—January 1, 1823.

(5) An Act to make appropriations for certain claims against the state.—January 1, 1823.

(6) An Act respecting bail in civil cases.—December 9, 1823.

(7) An Act concerning writs of certiorari.—December 9, 1823.

(8) An Act to legalize registering and recording certain deeds or conveyances of land in this state, and for other purposes.—December 9, 1823.

(9) An Act restricting the recovery of claims against the counties respectively in certain cases.—December 9, 1823.

(10) An Act supplementary to an act entitled "An act to authorize administrators to sell land belonging to the estate of their intestate, to which a complete title has not been obtained," passed December 27th, 1822.—December 10, 1823.

(11) An Act supplementary to the laws respecting garnishment.—December 17, 1823.

(12) An Act to compel defendants to bills of injunction to give bond and security, before they shall have the benefit of executions on their judgments at law.—December 17, 1823.

(13) An Act to provide for contesting elections of justices of the peace and constables.—December 17, 1823.

(14) An Act to alter and amend the existing laws concerning strays.—December 17, 1823.

(15) An Act amendatory to an act entitled "An act to provide for the printing of the laws and journals, and for other purposes," passed December 25th, 1822.—December 17, 1823.

(16) Resolutions requiring the chairman of the committees on enrolled bills, to preserve the engrossed copies of all acts and joint resolutions, and file them with the secretary of state.—December 17, 1823.

(17) An Act to establish the bank of the state of Alabama.—December 20, 1823.

(18) An Act to regulate escheats in this state, and to appoint escheators.—December 20, 1823.

(19) An Act to regulate the licensing of physicians to practise, and for other purposes therein named.—December 22, 1823.

(20) An Act explanatory of the several acts now in force in this state to suppress duelling.—December 24, 1823.

(21) An Act to provide for the choosing electors of president and vice-president of the United States.—December 26, 1823.

(22) An Act supplemental to an act to establish the bank of the state of Alabama.—December 29, 1823.

YEAR AND NUMBER.	TITLE AND DATE.
1823: (23)	An Act to amend an act entitled "An act to regulate the proceedings in the courts of law and equity in this state."—December 29, 1823.
(24)	An Act to prevent fraudulent conveyances.—December 29, 1823.
(25)	An Act to amend the several acts for the settlement and relief of the poor.—December 29, 1823.
(26)	Resolution directing the governor to commission the several persons elected members of the medical boards.—December 29, 1823.
(27)	An Act in relation to the sixteenth sections.—December 30, 1823.
(28)	An Act to regulate the commissions of assessors and tax-collectors in this state.—December 30, 1823.
(29)	An Act to compel parties to a suit who plead the loss of any instrument in writing under which they claim a benefit, to make oath of the truth of such pleading.—December 31, 1823.
(30)	An Act restricting officers from taking commissions on costs collected by them on executions.—December 31, 1823.
(31)	An Act to provide for the payment of state witnesses.—December 31, 1823.
(32)	An Act to increase the compensation of jurors.—December 31, 1823.
(33)	An act for the better regulating the public officers in the several counties in this state.—December 31, 1823.
(34)	An Act in relation to seamen belonging to vessels in merchants' service.—December 31, 1823.
(35)	An Act declaring the old road from Warren Stone's in Montgomery county to the town of Montgomery, the state road, and for other purposes.—December 31, 1823.
(36)	An Act amendatory to the laws now in force respecting roads, &c.—December 31, 1823.
(37)	An Act to repeal in part and amend an act entitled "An act supplementary to an act to establish a state university," passed December 18, 1821.—December 31, 1823.
(38)	An Act to revise and amend an act entitled "An act to revise, consolidate, and amend the several acts relative to the militia of this state."—December 31, 1823.
(39)	Resolution in relation to the printing and distribution of the acts, resolutions, and journals of the general assembly.—December 31, 1823.
1824: (1)	An Act to amend an act entitled "An act to prevent the frauds and fraudulent combinations in the sales of the public lands within this state," passed at Huntsville on the 17th of December, 1819.—December, 1824.
(2)	An Act to prevent the abatement of suits at common law.—December 2, 1824.
(3)	An Act to repeal in part an act therein mentioned, and requiring the plea of set-off, or notice thereof in certain cases.—December 15, 1824.
(4)	An Act amendatory of an act entitled "An act regulating escheats in the state, and to appoint escheators," and for other purposes.—December 15, 1824.
(5)	An Act making bastards capable of inheriting, and transmitting inheritance on the part of their mothers.—December 18, 1824.
(6)	An Act regulating proceedings on penal bonds.—December 20, 1824.
(7)	An Act to authorize judges of the county courts to practise law out of the county in which they may reside.—December 20, 1824.
(8)	An Act authorizing executors, &c., to relinquish lands under the act of congress of the 18th May, 1824.—December 20, 1824.

YEAR AND NUMBER. TITLE AND DATE.

1824: (9) An Act to establish a county therein named, and for other purposes.—December 20, 1824.

(10) An Act to divide the thirty-second regiment of the militia of this state.—December 20, 1824.

(11) An Act the better to provide for the punishment of escapes.—December 22, 1824.

(12) An Act to provide for compensating the electors for president and vice-president of the United States.—December 22, 1824.

(13) An Act for rendering the decision of civil causes more speedy and less expensive than heretofore.—December 23, 1824.

(14) An Act concerning prisons and prisoners.—December 23, 1824.

(15) An Act amendatory of an act concerning divorce, passed December 21st, 1820.—December 23, 1824.

(16) An Act concerning costs where suits are instituted in the name of one person for the use of another.—December 24, 1824.

(17) An Act giving further time in which executions shall be made returnable, when issued by justices of the peace, from one county to another.—December 24, 1824.

(18) An Act to regulate the mode of taxing costs on appeals, taken from the decisions of the justices of the peace, to the circuit and county courts in this state.—December 24, 1824.

(19) An Act to regulate the sale of slaves by constables.—December 24, 1824.

(20) An Act to regulate pleadings at common law.—December 24, 1824.

(21) An Act giving additional remedy against constables.—December 24, 1824.

(22) An Act explanatory of, and supplemental to, the act to establish the bank of the state of Alabama.—December 24, 1824.

(23) An Act to provide for the payment of the interest on the loan obtained for the use of the state.—December 24, 1824.

(24) An Act to provide for the transfer of stock issued by the state, and for the renewal of lost certificates thereof.—December 24, 1824.

(25) An Act to provide for the payment of slaves executed in pursuance of law.—December 24, 1824.

(26) An Act supplementary to, and amendatory of, the laws now in force regulating the appointment of auctioneers and sales at auction.—December 24, 1824.

(27) An Act to alter the time of appointing overseers of roads.—December 24, 1824.

(28) An Act for the more effectual distribution of the journals of the senate, and of the house of representatives.—December 24, 1824.

(29) An Act to amend the attachment laws of this state.—December 25, 1824.

(30) An Act to amend the first section of an act entitled "An act amendatory to the laws now in force for the relief of insolvent debtors," passed June 15th, 1821.—December 25, 1824.

(31) An Act relative to the securities of judges of county courts.—December 25, 1824.

(32) An Act to raise a revenue for the support of government, until otherwise provided for by law.—December 25, 1824.

(33) An Act to prevent the commission of trespasses on the lands vested in the trustees of the university of Alabama, and for other purposes.—December 25, 1824,

(34) An Act giving a lien on vessels in certain cases.—December 25, 1824.

YEAR AND NUMBER. TITLE AND DATE.

1825: (1) An Act to authorize the appointment of a clerk of the supreme court, and for other purposes.—December 31, 1825.

1826: (1) An Act establishing, and permanently locating, the seat of government for the state of Alabama, pursuant to the twenty-ninth section of the third article of the constitution.—January, 1826.

(2) An Act to amend the charter of the bank of the state of Alabama.—January 2, 1826.

(3) An Act the more effectually to prevent trading with slaves, and for other purposes.—January 2, 1826.

(4) An Act to compensate county-court clerks for paying printers' fees for publishing the appraisement of certain strays.—January 2, 1826.

(5) An Act to prohibit the further granting licenses for gaming-tables.—January 4, 1826.

(6) An Act to require security upon granting a supersedeas.—January 4, 1826.

(7) An Act to alter and amend the several laws now in force in this state, to suppress the evil practice of duelling.—January 7, 1826.

(8) An Act the better to organize the militia of the counties of Covington and Dale.—January 7, 1826.

(9) An Act providing for the registration of deeds, grants, &c.—January 9, 1826.

(10) An Act to regulate elections.—January 9, 1826.

(11) An Act to alter the manner of electing major and brigadier generals.—January 10, 1826.

(12) An Act to regulate the navigation of certain rivers in this state by steam-boats.—January 12, 1826.

(13) An Act to repeal in part, and amend an act entitled "An Act restricting officers from taking commission on costs collected by them on executions," passed December 31, 1823.—January 12, 1826.

(14) An Act for the adjustment of outstanding accounts, and to compel the payment into the treasury of moneys heretofore and now detained by public defaulters, and which may hereafter be detained.—January 12, 1826.

(15) An Act to amend the act entitled "An act regulating judicial proceedings, and for other purposes."—January 12, 1826.

(16) An Act to provide for reviving actions of trespass.—January 12, 1826.

(17) An Act the better to secure money in the hands of clerks, sheriffs, and coroners.—January 12, 1826.

(18) An Act to extend the time for appointing overseers of roads, and apportioners of hands in this state, and for other purposes.—January 12, 1826.

(19) An Act to amend an act entitled "An act to regulate the licensing of physicians to practise, and for other purposes therein named."—Approved December 22, 1823.—January 12, 1826.

(20) An Act to alter the times of holding company courts martial.—January 12, 1826.

(21) An Act to provide against an unnecessary detention of grand juries, and for other purposes.—January 12, 1826.

(22) An Act to provide a speedy remedy against the obligors in injunction bonds.—January 12, 1826.

(23) An Act to amend an act entitled "An act to prevent immoral and disorderly conduct at places of religious worship."—January 12, 1826.

YEAR AND NUMBER. TITLE AND DATE.

1826:(24) An Act to authorize clerks and magistrates to collect costs in certain cases.—January 13, 1826.

(25) An Act to authorize clerks of the county courts to administer oaths in certain cases.—January 13, 1826.

(26) An Act to change the time of selling property levied upon by execution.—January 13, 1826.

(27) An Act to exempt invalids from paying poll-tax.—January 13, 1826.

(28) An Act to compel those making salt-petre in this state, to enclose in their works.—January 13, 1826.

(29) An Act better to secure the revenue arising from licenses granted to tavern-keepers, and others.—January 13, 1826.

(30) An Act for the better selecting, drawing, and summoning jurors.—January 14, 1826.

(31) An Act to authorize the judges of the circuit courts in certain cases, to order juries to be empannelled.—January 14, 1826.

(32) An Act to amend the laws now in force in relation to the duties of the county treasurers of this state.—January 14, 1826.

(33) An Act to repeal in part, and amend an act entitled " An act for the punishment of malicious mischief," passed 17th December, 1821.—January 14, 1826.

(34) An Act to authorize sheriffs to serve notices.—January 14, 1826.

(35) An Act to amend an act entitled "An act concerning dower."—January 14, 1826.

(36) An Act to fix the salary of the president of the bank of the state of Alabama, and for other purposes.—January 14, 1826.

(37) An Act to provide for the trial of officers in the militia of this state, and for other purposes.—January 14, 1826.

(38) An Act requiring the judges of the circuit courts to alternate, and for other purposes.—January 14, 1826.

(39) An Act to provide for holding two terms of the supreme court, and for other purposes.—January 14, 1826.

(40) An Act to compensate witnesses attending magistrates' courts.—December 15, 1826.

(41) An Act prescribing the punishment of slaves, and free persons of color, for the commission of the crime of manslaughter, on other slaves, or free persons of color.—December 30, 1826.

(42) An Act to amend the laws now in force for the punishment of malicious mischief.—December 30, 1826.

1827: (1) An Act to divide the forty-second regiment of the militia of this state. —January 1, 1827.

(2) An Act to divide the thirty-sixth regiment of Alabama militia.—January 1, 1827.

(3) Joint Resolution explanatory of the third section of an act entitled " An act to fix the salary of the president of the bank of the state of Alabama, and for other purposes."—January 3, 1827.

(4) An Act to provide for the distribution of the public arms, among the different volunteer corps in this state.—January 4, 1827.

(5) An Act supplementary to an act to establish a state university.—January 5, 1827.

(6) An Act to alter the mode of appointing assessors and tax-collectors, and for other purposes.—January 5, 1827.

(7) An Act directing in what manner and in what courts, suits may be brought against the state of Alabama.—January 6, 1827.

(8) An Act to amend an act to establish the bank of the state of Alabama, approved December 20th, 1823.—January 9, 1827.

YEAR AND NUMBER. TITLE AND DATE.

1827: (9) An Act explanatory of an act entitled "An act to provide for the election of justices of the peace and constables," passed December 31, 1822.—January 10, 1827.

(10) An Act to extend the civil and criminal jurisdiction of this state over so much of the Creek nation as was ceded under the treaty of the Indian Springs of 1825, within the chartered limits of the state of Alabama.—January 11, 1827.

(11) An Act to prevent the Creek Indians from hunting and trapping within the settled limits of this state.—January 11, 1827.

(12) An Act amendatory of the laws now in force on the subject of bail in civil cases.—January 12, 1827.

(13) An Act to pay officers for taking prisoners from one county to another in this state.—January 12, 1827.

(14) An Act making it the duty of the comptroller of public accounts to lay before both houses of the general assembly, annually, in the first week of its session, a fair expose of the disbursements from the contingent fund.—January 12, 1827.

(15) An Act to amend an act entitled "An act for the more effectual preservation of personal liberty."—January 12, 1827.

(16) An Act to reduce into one, the several acts concerning roads, bridges, ferries, and highways.—January 12, 1827.

(17) An Act to exempt the directors of the state bank, from certain public duties.—January 13, 1827.

(18) An Act more effectually to protect sheriffs, coroners, and constables, in the discharge of their duties.—January 13, 1827.

(19) An Act to raise a revenue for the support of government, until otherwise altered by law.—January 13, 1827.

(20) An Act to compel plaintiffs to give security for costs in certain cases. —January 13, 1827.

(21) An Act further to relieve insolvent debtors, and the better to secure the rights of creditors.—January 13, 1827.

(22) Resolution authorizing the money of the university, now in the treasury, to be vested in state stock, and for other purposes.—January 13, 1827.

(23) Resolutions relative to the militia laws of this state.—January 13, 1827.

(24) An Act relative to the duties of grand juries.—December 3, 1827.

(25) An Act to provide for the arranging, filing, and preservation of the papers relating to unfinished business of each session of the legislature.—December 13, 1827.

(26) An Act better to secure the benefit of the laws exempting certain property from execution, to poor families of this state.—December 13, 1827.

(27) An Act prescribing the mode of commencing the contest of certain elections, and of procuring evidence therein.—December 14, 1827.

(28) An Act to prevent the abatement of suits in certain cases.—December 17, 1827.

(29) An Act to revive and continue in force an act entitled "An act to provide for the choosing electors of president and vice-president of the United States," passed December 26th, 1823.—December 17, 1827.

(30) An Act to compel solicitors to reside in their respective circuits.—December 17, 1827.

YEAR AND NUMBER. TITLE AND DATE.

1827:(31) An Act to divide the twenty-second regiment of the militia of this state.—December 20, 1827.

(32) An Act supplementary to an act entitled "An act concerning executions and sales by sheriffs, and for other purposes," passed December 20th, 1820.—December 20, 1827.

(33) An Act to amend an act entitled "An act excluding from suffrage, serving as jurors, and holding offices, such persons as may be convicted of bribery, forgery, and other high crimes and misdemeanors.—December 20, 1827.

(34) An Act to amend an act to authorize clerks and magistrates to collect costs in certain cases.—December 20, 1827.

(35) Joint Resolution requiring the comptroller of public accounts to furnish the tax-collectors and county-court clerks with a certified copy of the revenue laws of this state.—December 24, 1827.

(36) An Act to give justices of the peace jurisdiction of certain contracts therein named.—December 26, 1827.

(37) An Act relative to off-sets before justices of the peace, and for other purposes.—December 28, 1827.

(38) An Act to repeal in part an act passed twenty-seventh December, 1814.—December 31, 1827.

1828: (1) An Act concerning the estates of deceased persons.—January 4, 1828.

(2) An Act to extend to St. Clair and Shelby counties concurrent civil and criminal jurisdiction with Autauga county in the Creek nation.—January 9, 1828.

(3) An Act to form a seventh judicial circuit.—January 9, 1828.

(4) An Act to amend an act entitled "An act to provide for the printing of the laws and journals, and for other purposes," passed 25th December, 1822.—January 10, 1828.

(5) An Act to regulate the inspection of tobacco in this state.—January 10, 1828.

(6) An Act to repeal so much of the 3d section of an act entitled "An act to reduce the expenses of the general assembly, and for other purposes," passed at Cahawba, the 15th day of June, 1821, as is herein specified.—January 10, 1828.

(7) An Act more effectually to prevent frauds and fraudulent conveyances, and for other purposes.—January 11, 1828.

(8) An Act to increase the capital of the bank of the state of Alabama.—January 12, 1828.

(9) An Act to apportion the representatives among the several counties in this state, and to divide the state into senatorial districts, according to the late census.—January 12, 1828.

(10) An Act concerning the attendance of jurors.—January 12, 1828.

(11) An Act to amend an act entitled "An act to divide the state into districts for electing representatives to congress," passed December 21, 1822.—January 12, 1828.

(12) An Act to authorize the commissioners of revenue and roads of Mobile county to levy a special tax, and for other purposes.—January 12, 1828.

(13) An Act to authorize and require the secretary of state to procure and distribute to each county in this state, one set of weights and measures.—January 12, 1828.

(14) Joint Resolution declaring the expiration of the office of the present trustees of the university of the state of Alabama.—January 12, 1828.

YEAR AND NUMBER. TITLE AND DATE.

1828:(15) An Act further to amend the charter of the bank of the state of Alabama.—January 14, 1828.

(16) An Act to provide for the transfer of stock issued by the state, and for the renewal of lost certificates thereof.—January 15, 1828.

(17) An Act to provide for the more speedy collection of debts due the bank of the state of Alabama, in certain cases.—January 15, 1828.

(18) An Act supplementary to an act entitled "An act to amend an act to establish the bank of the state of Alabama," approved December 20th, 1823.—January 15, 1828.

(19) An Act to provide for reports of the decisions of the supreme court. —January 15, 1828.

(20) An Act to establish the 52d regiment of Alabama militia.—January 15, 1828.

(21) An Act to alter the times of holding company courts martial.—January 15, 1828.

(22) An Act to authorize the governor to cause bonds taken for public arms to be renewed.—January 15, 1828.

(23) An Act relative to volunteer companies in the militia of this state, and for other purposes.—January 15, 1828.

(24) An Act concerning the duties of clerks of the county courts and other officers.—January 15, 1828.

(25) An Act regulating the duties of attorneys at law, and for other purposes.—January 15, 1828.

(26) An Act to authorize the sales of sixteenth sections, and for other purposes.—January 15, 1828.

(27) An Act for the further relief of securities.—January 15, 1828.

(28) An Act declaring the effects of notarial protests.—January 15, 1828.

(29) An Act regulating judicial proceedings.—January 15, 1828.

(30) An Act defining the liability of endorsers, and for other purposes.—January 15, 1828.

(31) An Act better to regulate judicial proceedings.—January 15, 1828.

(32) An Act to provide the clerks of the several counties in this state, with copies of the acts of the present and each subsequent congress of the United States.—January 15, 1828.

(33) An Act providing for the payment of solicitors for prosecuting to conviction, slaves charged with capital offences.—January 15, 1828.

(34) An Act relative to the satisfaction of executions.—January 15, 1828.

(35) An Act concerning the registration of deeds and patents.—January 15, 1828.

(36) An Act to amend an act entitled "An act respecting bail in civil cases," passed 9th December, 1823.—January 15, 1828.

(37) An Act to amend the law in relation to original attachments.—January 15, 1828.

(38) An Act the better to provide for the trial of the right of property, and for other purposes.—January 15, 1828.

(39) An Act explanatory of the eleventh and twenty-fourth sections of an act to reduce into one the several acts concerning roads, bridges, ferries, and highways, approved January 12th, 1827.—January 15, 1828.

(40) An Act to revive in part a certain act therein specified.—Jauuary 15, 1828.

(41) An Act amendatory of the several acts heretofore passed in relation to the public revenue.—January 15, 1828.

YEAR AND NUMBER.	TITLE AND DATE.
1828: (42)	An Act to amend an act to regulate the licensing of physicians to practise, and for other purposes, approved December 22, 1823.—January 15, 1828.
(43)	Joint Resolution authorizing a further investment of university funds.—January 15, 1828.
(44)	An Act explaining the true intent and meaning of two acts therein mentioned.—December 11, 1828.
(45)	An Act to authorize clerks of the circuit courts to take bonds of sheriffs, assessors, tax-collectors, and coroners, in certain cases.—December 13, 1828.
(46)	An Act for the relief of sheriffs.—December 20, 1828.
(47)	An Act relating to penal statutes.—December 24, 1828.
(48)	An Act to authorize the judge of the county court and commissioners of roads and revenue, to fill vacancies in certain cases.—1828.
1829: (1)	An Act to increase the salary of the state printer.—January 10, 1829.
(2)	An Act to reduce into one the several acts giving fees to justices of the peace and constables, and for other purposes.—January 14, 1829.
(3)	An Act prohibiting certain persons from exercising the powers of justice of the peace and constable, of the state.—January 15, 1829.
(4)	An Act to legalize registering certain deeds or conveyances of lands in this state.—January 24, 1829.
(5)	An Act prescribing the duties of sheriffs and returning officers in holding elections, and returning the votes of all persons voting on proposed alterations of the constitution of the state of Alabama.—January 26, 1829.
(6)	An Act for the relief of sheriffs and other officers.—January 26, 1829.
(7)	An Act the better to secure the collection of the state revenue.—January 26, 1829.
(8)	An Act to exempt certain persons from performing military duty in this state, therein named.—January 27, 1829.
(9)	An Act concerning the fees of clerks and sheriffs.—January 28, 1829.
(10)	An Act in relation to the appointment and duties of trustees.—January 28, 1829.
(11)	An Act to authorize the employment of an additional clerk for the bank of the state of Alabama.—January 29, 1829.
(12)	An Act to amend an act entitled " An act to reduce into one the several acts concerning roads, bridges, ferries, and highways," passed January 12, 1827.—January 29, 1829.
(13)	An Act to amend an act entitled " An act to authorize the sales of sixteenth sections, and for other purposes."—January 29, 1829.
(14)	An Act to prevent extortion by public officers, and for other purposes.—January 29, 1829.
(15)	An Act to extend the jurisdiction of the state of Alabama, over the Creek nation.—January 29, 1829.
(16)	An Act to divide the twenty-first regiment of the militia of this state, and for other purposes.—January 29, 1829.
(17)	An Act to repeal in part, and amend an act entitled " An act defining the liability of endorsers, and for other purposes," approved January 15th, 1828.—January 30, 1829.
(18)	An Act amendatory of the laws of this state, on the subject of elections of members of the general assembly.—December 11, 1829.
(19)	An Act concerning the dismissal of suits at common law.—December 29, 1829.

YEAR AND NUMBER.	TITLE AND DATE.
1830: (1)	An Act amendatory of the laws of this state on the subject of confining prisoners committed upon process from courts of the United States.—January 7, 1830.
(2)	An Act to give the circuit courts of this state, power to render judgments final against the security in writs of error bond.—January 9, 1830.
(3)	An Act to authorize the courts of this state to render final judgment against the security of non-residents for costs.—January 9, 1830.
(4)	An Act to authorize certain persons to practise law in this state.—January 13, 1830.
(5)	Joint Resolution, requiring the offices of the comptroller and treasurer to be examined annually.—January 13, 1830.
(6)	An Act to prevent the evil practice of betting on elections.—January 14, 1830.
(7)	An Act making permanent the act prescribing the duties of sheriffs and returning officers, in holding elections, and returning the votes of all persons voting on proposed alterations of the constitution of the state of Alabama, approved January 26th, 1829.—January 14, 1830.
(8)	An Act to regulate certain proceedings of county courts.—January 14, 1830.
(9)	An Act to amend an act entitled "An act to regulate the licensing of Physicians to practise, and for other purposes therein named," passed December 23, 1823.—January 15, 1830.
(10)	An Act supplemental to an act passed the 14th of December 1827, prescribing the mode of contesting elections.—January 15, 1830.
(11)	An Act to extend the powers of the county and orphans' court in certain cases, and for other purposes.—January 16, 1830.
(12)	An Act to regulate the landing of goods by steam-boats and barges, and for other purposes.—January 16, 1830.
(13)	An Act supplementary to an act passed the 15th day of January, 1828, entitled "An act to authorize the sales of sixteenth sections, and for other purposes."—January 16, 1830.
(14)	An Act to regulate proceedings in certain actions of detinue.—January 16, 1830.
(15)	Joint Resolution, ratifying the proposed amendments to the constitution of the state of Alabama, so as to limit the tenure of the judges' offices to six years.—January 16, 1830.
(16)	An Act for the relief of securities in bank.—January 19, 1830.
(17)	An Act more effectually to prevent the circulation of what are termed "change bills or tickets."—January 20, 1830.
(18)	An Act the better to provide for the examination of the offices of the clerks of the circuit and county courts of this state.—January 20, 1830.
(19)	An Act regulating the duties of county treasurer.—January 20, 1830.
(20)	An Act to furnish each commissioner of revenue and roads with the statutes of this state.—December 15, 1830.
(21)	An Act to regulate trials before justices of the peace.—December 31, 1830.
(22)	An Act to amend the act regulating judicial proceedings.—December 31, 1830.
(23)	Joint resolution, requiring the secretary of state, comptroller of public accounts, or state treasurer, to administer the oaths of office to the members of the general assembly.—December 31, 1830.

YEAR AND NUMBER. TITLE AND DATE.

1831: (1) An Act relating to the acknowledgment of deeds, and relinquishment of dower.—January 6, 1831.

(2) An Act more effectually to secure trials in capital cases by impartial jurors.—January 10, 1831.

(3) An Act authorizing and legalizing the registration of deeds not heretofore recorded in the legal time.—January 10, 1831.

(4) An Act to amend an act entitled "An act to amend an act to regulate the licensing physicians to practise, and for other purposes," passed the 15th day of January, 1830.—January 12, 1831.

(5) Joint Resolution providing for the distribution of the laws of the United States.—January 12, 1831.

(6) An Act in part to amend an act entitled "An act to revise, consolidate, and amend the several acts relative to the militia of this state," passed December 31st, 1822.—January 13, 1831.

(7) An Act to amend an act in relation to capital crimes committed by slaves and free persons of color.—January 13, 1831.

(8) An Act to divide the twentieth regiment of the militia of this state, and for other purposes.—January 13, 1831.

(9) An Act to continue in force and amend an act entitled "An act to provide for reporting the decisions of the supreme court."—January 15, 1831.

(10) An Act to prohibit the clerks of the circuit and county courts of Tuscaloosa county, from taxing in the bill of costs, a county tax on judgments rendered in favor of the bank of the state of Alabama.—January 15, 1831.

(11) Joint Resolution to authorize the secretary of state to procure books and stationary for the use of the state departments, and general assembly.—January 15, 1831.

(12) Joint Resolution making it the duty of the secretary of state to distribute to each regiment, the abstracts of infantry tactics now in his office.—January 15, 1831.

(13) An Act to authorize the transfer of causes from the county courts to the circuit courts in particular cases.—December 20, 1831.

(14) An Act to exempt from taxation the several churches in the state of Alabama, dedicated to religious worship.—December 28, 1831.

(15) An Act to form a new regiment in the county of Pickens.—December 28, 1831.

(16) Joint Resolution in relation to white settlers on Indian territory, and state jurisdiction.—December 31, 1831.

1832: (1) An Act amendatory to the several acts concerning witnesses.—January 3, 1832.

(2) An Act to amend an act entitled "An act supplementary to the laws respecting garnishment," approved December 17, 1823.—January 4, 1832.

(3) An Act to amend an act entitled "An act for the better regulation of judicial proceedings," passed February 7, 1818, and for other purposes.—January 5, 1832.

(4) An Act to provide for the more speedy trial of slaves and free persons of color.—January 7, 1832.

(5) An Act to divide the forty-sixth regiment of the militia of this state, composed of the counties of Covington and Dale.—January 13, 1832.

(6) An Act to organize a separate supreme court.—January 14, 1832.

(7) An Act to extend the jurisdiction of the state of Alabama over the territory according to the geographical boundaries within the limits of said state, and for other purposes.—January 16, 1832.

YEAR AND NUMBER. TITLE AND DATE.

1832: (8) An Act to prevent the introduction of slaves into Alabama, and for other purposes.—January 16, 1832.

(9) An Act concerning the registration of deeds and conveyances.—January 18, 1832.

(10) An Act to amend an act to authorize the sales of sixteenth sections, and for other purposes, passed January 15, 1828.—January 18, 1832.

(11) An Act to limit actions against securities of officers.—January 18, 1832.

(12) An Act to divide the twelfth regiment of the militia of this state.—January 19, 1832.

(13) An Act to amend an act entitled "An act to raise a revenue for the support of government until otherwise altered by law," passed the 13th of January, 1827.—January 20, 1832.

(14) An Act to establish a branch of the bank of the state of Alabama.—January 21, 1832.

(15) An Act relating to the alternating of the judges of the circuit courts of this state.—January 21, 1832.

(16) An Act to repeal in part an act entitled "An act for the government of gin-holders," passed November the 16th, 1818.—January 21, 1832.

(17) An Act to exempt from taxation all incorporated academies in this state.—January 21, 1832.

(18) An Act to authorize the commissioners' courts of roads and revenue, to grant private ways in certain cases.—January 21, 1832.

(19) An Act more effectually to secure to militia officers the infantry tactics received by this state from the general government.—January 21, 1832.

(20) An Act amendatory to the laws concerning divorce.—January 21, 1832.

(21) An Act to reduce the size of the several divisions and brigades of the militia of this state.—January 21, 1832.

(22) An Act to alter and amend the several laws of this state, now in force, providing for the election of electors of president and vice-president of the United States.—November 8, 1832.

(23) An Act to repeal in part, an act approved January 21, 1832, entitled "An Act relating to the alternating of the judges of the circuit courts of this state."—November 10, 1832.

(24) An Act to establish a branch of the bank of the state of Alabama, in the Tennessee Valley.—November 16, 1832.

(25) An Act for the accommodation of the purchasers of sixteenth sections and donated lands.—November 17, 1832.

(26) An Act to establish a branch of the bank of the state of Alabama, in the city of Mobile.—December 4, 1832.

(27) An Act to amend and repeal an act entitled "An Act to prevent the introduction of slaves into Alabama, and for other purposes," approved January 16th, 1832.—December 4, 1832.

(28) An Act to repeal in part the several acts now in force, in relation to the practice of medicine.—December 12, 1832.

(29) An Act to increase the capital stock of the branch of the bank of the state of Alabama, at the town of Montgomery.—December 12, 1832.

(30) An Act to repeal in part and amend "An Act to revise, consolidate, and amend the several acts relative to justices of the peace and constables," passed December 27th, 1814.—December 15, 1832.

YEAR AND NUMBER. TITLE AND DATE.

1832: (31) An Act to authorize the judges of the supreme court, to grant certain writs therein mentioned.—December 15, 1832.

(32) An Act more particularly defining the power of the commissioners of roads and revenue, in certain cases therein specified.—December 18, 1832.

(33) An Act further to provide for the election of electors of president and vice-president of the United States.—December 21, 1832.

(34) An Act to authorize the county courts of roads and revenue to change the state roads running through their respective counties.—December 21, 1832.

(35) An Act to reduce the damages on bills of exchange, purchased by the bank of the state of Alabama, or either of its branches.—December 21, 1832.

(36) An Act to repeal in part an act entitled "An Act to raise a revenue for the support of government, until otherwise altered by law," passed January 20, 1832.—December 21, 1832.

(37) An Act for the relief of witnesses and jurors.—December 21, 1832.

(38) An Act to amend an act entitled "An Act defining the liability of endorsers, and for other purposes," approved January 15th, 1828. —December 21, 1832.

(39) An Act to amend an act entitled "An Act to extend the powers of the county and orphans' court in certain cases, and for other purposes," approved January 16th, 1830.—December 21, 1832.

(40) An Act to enable sheriffs and coroners to take recognizances in certain cases therein named.—December 28, 1832.

1833: (1) An Act to educate children in certain cases.—January 1, 1833.

(2) An Act more particularly to define the duties of the secretary of state, in relation to the arrangement and printing of the acts of each session of the general assembly.—January 3, 1833.

(3) An Act to amend "An Act to incorporate and empower religious societies of every denomination to hold real estate."—January 5, 1833.

(4) An Act to revive in part and amend "An Act to allow trustees of the state university pay for their services," passed December 26th, 1822.—January 5, 1833.

(5) An Act to repeal in part an act therein mentioned.—January 5, 1833.

(6) An Act regulating the time of service of state printer.—January 8, 1833.

(7) An Act to prevent frauds in the sale of oil, and for other purposes.—January 9, 1833.

(8) An Act to provide for the transfer of stock issued by the state, and for the renewal of lost certificates thereof.—January 9, 1833.

(9) An Act to provide for legitimating bastard children, and to authorize the change of names.—January 9, 1833.

(10) An Act to provide for the translating and recording of the British, French, and Spanish records of this state.—January 9, 1833.

(11) An Act to divide the state into districts, for electing representatives to congress.—January 10, 1833.

(12) An Act to amend the several acts relating to the sixteenth sections.—January 10, 1833.

(13) An Act to simplify *scire facias* in criminal cases, and for other purposes.—January 10, 1833.

(14) An Act to provide for the summoning of juries for the county courts. —January 10, 1833.

YEAR AND NUMBER. TITLE AND DATE.

1833:(15) An Act providing for the maintenance and education of certain persons therein named.—January 10, 1833.

(16) An Act to repeal in part and amend "An Act to regulate the rate of interest," passed December 17, 1819.—January 10, 1833.

(17) An Act to require jurors to be drawn in certain cases.—January 10, 1833.

(18) An Act to revise, amend, amplify, and repeal in part, certain acts contained in the new digest of this state.—January 10, 1833.

(19) An Act for the reduction of the taxes.—January 11, 1833.

(20) An Act to provide for the appointment of commissioners without this state to take testimony, &c.—January 11, 1833.

(21) An Act to alter and establish the judicial circuits of this state.—January 11, 1833.

(22) An Act concerning attachments.—January 12, 1833.

(23) An Act to fix the salary of the president of the bank of the state of Alabama, and for other purposes.—January 12, 1833.

(24) An Act to regulate the weighing of cotton in the city of Mobile, and for other purposes.—January 12, 1833.

(25) An Act explanatory of the liability of persons to work on roads.—January 12, 1833.

(26) An Act to amend the charter of the bank of the state of Alabama.—January 12, 1833.

(27) An Act to provide for the settlement of the estates of deceased persons, in certain cases therein named.—January 12, 1833.

(28) An Act to exempt certain property from execution.—January 12, 1833.

(29) An Act to amend the militia law, under the head of court-martial.—January 12, 1833.

(30) An Act to preclude from office certain persons therein named.—January 12, 1833.

(31) An Act relative to the reporter of the decisions of the supreme court.—January 12, 1833.

(32) An Act to provide for the appropriation of the net proceeds of the funds arising from the sale of the sixteenth sections.—January 12, 1833.

(33) An Act requiring the governor to reside at the seat of government.—January 12, 1833.

(34) An Act for the relief of purchasers of sixteenth sections.—January 12, 1833.

(35) An Act to explain in part and amend an act entitled "An act concerning the assignment of bonds, notes, &c. and for other purposes," passed December 18, 1812.—January 12, 1833.

(36) An Act to provide for the examination of the bank of the state of Alabama, and its several branches.—January 12, 1833.

(37) An Act to authorize the judges of the supreme court to hold adjourned terms.—January 12, 1833.

(38) An Act to distribute the funds arising from the sale of the sixteenth sections.—January 12, 1833.

(39) An Act to provide for taking depositions of judges of the circuit and supreme courts of the state of Alabama, and for other purposes therein named.—January 12, 1833.

(40) An Act prescribing the duties of coroners.—January 12, 1833.

(41) An Act the better to secure the funds of the university of Alabama.—January 12, 1833.

YEAR AND NUMBER.	TITLE AND DATE.
1833:(42)	An Act regulating the compensation of jailors for victualling slaves confined in jail, and for other purposes.—January 12, 1833.
(43)	An Act to adopt, print, bind, and distribute the new digest compiled by John G. Aikin, Esq., and for other purposes.—January —, 1833.

DIGEST

OF

THE LAWS OF ALABAMA.

ACADEMIES.

§ 1. All houses and lots of land held by any incorporated academy in this state, shall not be liable to the payment of any taxes for either state, county, or corporation purposes, so long as the same shall be held and occupied by any company for the purpose of schools.

1832—(17) *Sec.* 2. Incorporated—exempt from taxes.

ALABAMA.

§ 1. All that tract of country bounded on the west by the Mississippi, on the north by a line to be drawn due east from the mouth of the Yazoo to the Chatahooche river; on the east by the river Chatahooche, and on the south by the thirty-first degree of north latitude, shall be, and hereby is constituted one district, to be called the Mississippi territory.

Act of Congress, 1798. *Sec.* 3. Mississippi Territory established.

§ 2. The tract of country lying north of the Mississippi territory, and south of the state of Tennessee, and bounded on the east by the state of Georgia, and on the west by the state of Louisiana, shall be, and the same is hereby annexed to, and made a part of the Mississippi territory.

Act of Congress, 1804. *Sec.* 7. Boundaries enlarged.

§ 3. All that portion of territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, shall be, and the same is hereby annexed to the Mississippi territory.

Act of Congress, 1812. *Sec.* 1. Boundaries further enlarged.

§ 4. All that part of the *Mississippi territory* which lies within the following boundaries, to wit: beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido river, thence east to the western boundary line of the state of Georgia, thence along said line to the southern boundary line of the state of Tennessee, thence west along said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of Washington county, thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido river, and thence up the same to the beginning, shall, for the purpose of a temporary government, constitute a separate territory, and be called "Alabama."

Act of Congress, 1817. *Sec.* 1. Alabama territory formed, and its boundaries defined.

§ 5. The inhabitants of the territory of Alabama are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and the said terri-

Act of Congress, 1819. *Sec.* 1. The inhabitants of Alabama authorized to form a Constitution and state government. To be admitted into the Union.

tory, when formed into a state, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever.

Ib. Sec. 2. Boundaries of the state. Including islands within six leagues of the shore.

§ 6. The said state shall consist of all the territory included within the following boundaries, to wit: beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the north-west corner of Washington county; thence, due south to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning.

Ib. Sec. 3. Line of demarcation between Mississippi and the state to be formed, to be run and cut by the surveyors of lands south of Tennessee and the surveyor of Alabama Territory. In what manner, provided, &c.

§ 7. It shall be the duty of the surveyor of the lands of the United States south of the state of Tennessee, and the surveyor of the public lands in the Alabama territory, to run and cut out the line of demarcation, between the state of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south, from the north-west corner of Washington county to the Gulf of Mexico, will encroach on the counties of Wayne, Green, or Jackson, in said state of Mississippi, then the same shall be so altered as to run in a direct line from the north-west corner of Washington county to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagoula.

Con. Ala. Preamble. State formed and name adopted. Boundaries assigned by Congress recognized and confirmed.

§ 8. We, the people of the Alabama territory, having the right of admission into the general government, as a member of the Union, consistent with the constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an act of congress, entitled "An act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states;" in order to establish justice, ensure tranquillity, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity, the rights of life, liberty, and property, do ordain and establish the following constitution, or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "*The State of Alabama.*" And we do hereby recognize, confirm, and establish the boundaries assigned to said state by the act of congress aforesaid:—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law in consequence of any cession of territory by the United States, or either of them.

Note.—The titles of the acts referred to in the margin, may be found in page xlviii.

AMENDMENTS TO THE CONSTITUTION.

Con. Ala. Art. 6. Constitution, how amended.

The general assembly, whenever two-thirds of each house shall deem it necessary, may propose amendments to this constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the secretary of state for the time being, of the names of all those voting for representatives, who have voted on such proposed amendments; and if thereupon it shall appear that a majority of all the citizens of this state, voting for representatives, have voted in favour of such proposed amendments, and two-thirds of each house of the next general assembly shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of this constitution: *Provided*, That the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house.

1829—(5) and 1830—(7) *Consolidated.* Duty of officers holding election, in taking and certifying the votes on the proposed amendment to the constitution. Sheriff or returning officer to make return to secretary of state.

§ 1. Whenever any amendment of the constitution of this state may be proposed by the legislature to the people thereof, it shall be the duty of each officer holding the next general election, to inquire of every voter, whether he votes for or against the proposed amendment or amendments; and the managers holding said elections shall cause the respective clerks to enter the name of every person voting, with the word, "Yea," or "Nay," as he may vote, opposite his name; a list of which said names he shall certify and return to the sheriff or other returning officer in his county, who shall send up a true and correct list of the names of all persons so voting, certified under his hand to the secretary of state, within thirty days after the result of the election in each county or district shall have been ascertained.

Penalty for failure.

§ 2. If any sheriff or officer holding or returning or managing any election in this state, shall fail to perform the duties required of them by this act, such sheriff or other officer shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, in any court having jurisdiction thereof; one half to the use of the state, and the other half to any person who may sue for the same; and shall also forfeit his office, and shall be incapable of holding the same again for the term of six years.

Secretary of state's duties.

§ 3. It shall be the duty of the secretary of state to cause this act together with the resolutions proposing amendments to the constitution, to be published in print throughout the state, three months preceding the next general election; and he shall give notice of the failure of every returning officer, who fails to make the return as hereinbefore prescribed.

Returning officer to return the number of those voting for Representatives, and not for the amendment.

§ 4. It shall be the duty of the several returning officers mentioned in this act, to return the number of all those who may vote for Representatives and not for the proposed amendments, to the secretary of state, at the same time and in the same manner that they return the votes for and against the proposed amendment to the constitution.

ARBITRATION.

1819—(4) Mode of proceeding in order to terminate suits and controversies by arbitration.

§ 1. It shall be lawful for all persons desirous to end any controversy or suit by arbitration, to appoint any person or persons as arbitrators, and (if no suit is pending) the parties shall concisely state in writing the nature of the controversy to any court having jurisdiction thereof; whereupon the court shall issue an order, certified by the clerk of the court, and directed to said arbitrators, stating the dispute to them referred:—Or if in vacation, such statement may be made to the clerk of the court, who shall issue the order heretofore required to be issued by the judges.[a] And in case any arbitrator or arbitrators so appointed shall fail or refuse to act, the parties shall have power to appoint one or more arbitrators (as the case may be) in writing, which shall be signed by such parties, deposited in the hands of the arbitrators, and by them returned to the proper officer with the other papers—said arbitrators, or either of them are empowered to issue subpœnas for witnesses, under the same regulations as are prescribed by law in cases of suits, to which all sheriffs and constables are directed to give obedience; and all persons summoned as witnesses, by virtue of said subpœnas, shall be allowed the same compensation, while travelling to, and attending on said arbitration, and be equally privileged from arrest, or on failure to attend at the times and places in said subpœnas expressed, shall be subject to the same fines and penalties as witnesses are in similar cases, in the circuit courts.

[a] *Act of Dec.* 11, 1820, *Sec.* 2.

Arbitrators may issue subpœnas for witnesses.

Witnesses' compensation, privileges, and liabilities.

Arbitrators to be sworn.

§ 2. The arbitrators so chosen, before they enter on the investigation of any matters to them submitted, shall take an oath or affirmation, impartially to determine the controversy to them submitted, agreeably to evidence and the equity of the case, to the best of their judgment, without favor or affection; which oath shall be administered to them by any judge or justice of the peace within this state. The said arbitrators shall make up their award in writing, under their hands and seals, noting therein the time at which it was made; one fair copy of which, signed as aforesaid, shall immediately upon its being made, be delivered to each of the contending parties; and the original shall be delivered to the court in which the commission was made, at the court next succeeding the date of said award. The award so made, shall be entered of record, and made the judgment or decree of said court, and shall not be invalidated, set aside, or appealed from, unless it shall be made to appear to said court, that such award was obtained by corruption, evident partiality, or other undue means, in which case, either party may appeal therefrom to any court having cognizance thereof, under the rules and regulations prescribed by law for granting appeals from said courts.

To make award in writing.

Award to be entered of record.

For what causes it may be appealed from.

Award not affected by informality, if it decides the case.

§ 3. No award, made by virtue of this act shall be liable to be examined into, superseded or reversed by writ of error, or set aside by the court to which it was returned, for want of form only, nor for other irregularity, if such award decides the case, suit, matter, or controversy submitted to arbitration.(1)

When amount does not exceed 50 dollars.

§ 4. In cases of suit or controversy, where the amount shall not exceed fifty dollars, the parties may obtain an order from a justice of the peace, directed to such arbitrators as may be appointed, stating the dispute to them referred, who shall take the oath, proceed in the same manner, and exercise the same powers hereinbefore provided; and judgment shall be entered upon the award of the said arbitrators, when rendered to the justice by whom the order was made, which shall not be set aside, invalidated, or appealed from, except in the manner and for the causes prescribed in this act.

Compensation of arbitrators.

§ 5. The arbitrators for their services shall receive two dollars per day, if demanded, to be paid jointly by the contending parties, before the delivery of the copies of the award: and the justices[1] and clerks shall be allowed, for all the services performed by them under this act, the same fees as are allowed by law for the like services in cases of a similar nature.

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(1) An award shall not be set aside because the arbitrators state as the ground of it, matter which is not a legal cause of action: Goodwin *v.* Yarbrough, 1 *Stewt. Rep.* 152. The court will intend everything which the record will warrant, to sustain a judgment rendered on an award: Tankersley *v.* Richardson, 2 *Stewt. Rep.* 130. Award held sufficient to support the judgment although no declaration was filed: *Ib.*

Fees of clerks, how paid.

§ 6. The fees to the justices and clerks, prior to the return and entry of the award, shall be jointly paid down by the contending parties, as those services are rendered; but after the award is entered of record, all subsequent costs shall be charged to and collectable from that party against whom the judgment or award shall be, under such award, except the award shall otherwise direct.

1824—(13) *Sec.* 1. Party making a demand may lodge a statement thereof with justice of the peace.

§ 7. When any persons who may have a dispute of what nature soever, shall agree to have the same determined by referees, mutually chosen by the parties for the purpose, it shall be lawful for the person or persons making the demand in the action, to make out a particular statement thereof, under his or their hands in writing, and to lodge the same with some justice of the peace, of the county in which either of the parties may reside; and the said justice, on application of the parties, shall make out an agreement to be annexed to the aforesaid demand, and to be by them or their lawful agents or attorneys subscribed in substance as follows:

Agreement of parties to submit.

State of Alabama, *county:*

Know all men, that A. B. of and C. D. of have agreed to submit the demand made by the said A. B. against the said C. D. which is hereunto annexed, (and all other demands as the case may be,) to the determination of E. F., G. H., and I. K.; the report of whom, or the major part of whom, being made as soon as may be, to any court of record of said county, (if the amount exceed fifty dollars; if not, to any justice of the peace of said county,) judgment thereon to be final: and if either of the parties shall neglect to appear before the referees after the proper notice has been given of the time and place appointed by the referees for hearing the parties in this action, which notice the referees shall be the judges of, they shall then have power to proceed *ex parte*.

Stipulation for *ex parte* hearing.

A. B.
C. D.

Justice's certificate.

This day the above named A. B. and C. D. appeared personally before me and acknowledged the above instrument to be their free act; Given under my hand this day of 18

A. B. Justice of the Peace.

Ib. Sec. 2. Judgment exceeding 50 dollars to be returned to circuit or county court. Proceedings thereon.

§ 8. In all cases where the amount of the judgment rendered shall exceed fifty dollars, the same shall be returned by the referees, under their hands and seals, to either the county or circuit court, of the county in which such justice of the peace may dwell at the time of taking the agreement as aforesaid; and the court to whom the report of the referees may be made as aforesaid, shall have cognizance thereof in the same manner, and under the same rules, as if the referees had been appointed by a rule of said court.

Ib. Sec. 3. Judgment not exceeding 50 dollars to be returned to some justice, who shall issue execution.

§ 9. In all cases were the amount of the judgment rendered as aforesaid, shall be fifty dollars or under, the same shall be returned to some justice of the peace of the county wherein such order may have been made, who thereupon shall enter up judgment and award execution in the same manner as if such judgment had been rendered by such justice of the peace, without the intervention of such referees.

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[1] The act of January 14, 1829, consolidating the several acts giving fees to justices of the peace and constables, provides no compensation for the services here alluded to, and enacts, Sec. 4. "That any other service performed by any justice or constable, *for which no fee is allowed by this act,* shall be considered *ex officio,* and no fee allowed, had, demanded or received for the same." See "Fees,"—§ 13.

Ib. Sec. 4. By consent of parties award may be published before returned. Parties then agreeing, award not to be returned, but to be a bar.

§ 10. When the parties shall agree that the determination of the referees may be made known prior to its being returned as aforesaid, it shall be lawful for the referees to make the determination known to the parties, without its affecting in any degree the validity thereof; and if the parties shall then agree to settle their dispute according to the determination of the referees or otherwise, without further process, the said referees may deliver to the parties the papers belonging to them respectively; otherwise they shall make a report of their proceedings as before provided for by this act: *Provided*, that such determination shall be a bar to a second suit or plaint for the same cause of action.

Ib. Sec. 5. Referees vested with the same authority as those appointed by rule of court.

§ 11. The referees who may be appointed in pursuance of this act, shall be vested with all the authority that referees are vested with, who are appointed by a rule of court; and witnesses may be by them, or either of them, summoned to appear before them, and be sworn in the same manner, as is or may be prescribed by law for summoning witnesses before referees appointed by a rule of court as aforesaid.

Ib. Sec, 6. Award final, unless obtained by undue means.

§ 12. No judgment awarded by referees as aforesaid, shall be subject to be reversed or set aside for informality or other cause, if the subject matter of the reference is decided; unless it should appear satisfactorily to the court, or justice of the peace, before whom the same may be returned, that such judgment was obtained by evident partiality, bribery, corruption, or other undue means.

Ib. Sec. 8. Referees' compensation, 1 dollar per day.

§ 13. The referees shall be entitled to demand and receive the sum of one dollar each, for every day they may be engaged in the determination of any controversy to them thus submitted.

Ib. Sec. 9. Referees' oath.

§ 14. The referees shall, before they enter on the discharge of their duty, take an oath or affirmation, impartially to determine the matter to them referred, according to justice and the opinion they entertain of the evidence, without favor, fear, or affection.

ARMS—PUBLIC.

1820—(6) Governor may order arms to be transported to any point.

§ 1. The governor of the state of Alabama, or the person exercising the powers of governor, is hereby authorized to order the quartermaster-general, to cause to be transported to any point in this state, any number of public arms which he may deem necessary, when he shall have reason to believe that there is danger of insurrection or invasion, or that the public good requires such transportation.

Ib. Sec. 3. Quartermaster-General to execute Governor's order.

§ 2. The quartermaster-general is hereby required to cause to be conveyed, upon receiving the governor's order, forthwith, the number of arms to the place specified in such order.

1821—(17) *Sec.* 1, [a] *The preceding act.* Governor may designate officer to receive the arms, who shall give bond.

§ 3. Whenever it is deemed necessary by the governor to transmit the public arms, in pursuance of the act to which this is an amendment,[a] he is hereby authorized to send them to such officer as he may appoint; which officer so receiving such arms, shall give bond with sufficient security to the governor and his successors in office, in such sum as the governor may deem sufficient, for the safe keeping and delivery of said arms, when required by the governor.

1827—(4) *Sec* 1. Arms, &c. to be distributed to volunteer corps.

§ 4. The public arms and accoutrements belonging to this state, shall be distributed among the volunteer corps of the same, in the manner, and on the conditions hereinafter prescribed.

§ 5. It shall be the duty of the commander-in-chief, on the application of a commander of a brigade, to issue his order to the quartermaster-general, or person having charge of the public arsenal, to hand over the arms aforesaid, in the following proportion to the different brigades, to wit: to the first brigade, seventy-two muskets and accoutrements; to the second brigade, seventy-two muskets and accoutrements; to the third brigade, forty-eight muskets and accoutrements; to the fourth brigade, one hundred and twenty muskets and accoutrements; to the fifth brigade, one hundred and sixty muskets and accoutrements; to the sixth brigade, ninety-six muskets and accoutrements; to the seventh brigade, one hundred and sixty muskets and accoutrements; to the eighth brigade, one hundred and twenty muskets and accoutrements; to the ninth brigade, ninety-six muskets and accoutrements; to the tenth brigade, forty-eight muskets and accoutrements; to the eleventh brigade, ninety-six muskets and accoutrements; to the twelfth brigade, seventy-two muskets and accoutrements; to the thirteenth brigade, seventy-two muskets and accoutrements; *Provided*, said application shall be accompanied with the bond of the colonel commanding the regiment to which the volunteer corps, for whose use the arms are drawn, shall be attached, or some other officer of said regiment, with good and sufficient security, in double the value thereof, conditioned for the safe keeping and return of said arms, when called for by the proper authority.

Ib. Sec. 2. Duty of the Commander-in-Chief. Apportionment of arms, &c. among the several brigades. Colonel or other officer of the regiment to give bond.

§ 6. Said bond shall be made payable to the governor for the time being, and his successors in office, and be approved of by him.

Ib. Sec. 3. Bond payable to the governor, and to be approved by him.

§ 7. The pistols and sabres now in the arsenal shall be distributed on the conditions prescribed in the second section of this act, and in the following manner, to wit: To the first brigade, thirty-nine sabres; to the third brigade, eighty pistols; to the fourth brigade, eighty pistols; to the fifth brigade, forty-five sabres; to the tenth brigade, forty-five sabres; to the twelfth brigade, eighty pistols.

Ib. Sec. 4. Pistols and sabres, how distributed.

§ 8. Should the officers of either brigade, neglect to make application for said arms within twelve months from the passage of this act, on the conditions pointed out in the second section of this act, it shall be the duty of the commander-in-chief, on application from either of the other brigades, to order the same to be furnished to said applicant on his complying with the provisions of the aforesaid second section.

Ib. Sec. 5. Quota assigned, if not applied for in 12 months, may be distributed to other brigades.

§ 9. The governor is hereby authorized and required, whenever it shall by him be deemed expedient, to call in such portion of the public arms as may have been, or may hereafter be delivered, or cause a renewal of the bond or bonds which may have been taken, with good and sufficient security.

1828—(22) *Sec.* 1. Governor may call in arms, or cause bonds to be renewed.

§ 10. A discretionary power is hereby vested in the governor to distribute the public arms that are now, or hereafter may be received, for the use of this state, among the volunteer companies, if applied for, in such manner as he may think proper, having a due regard to the different sections of the state.

Ib. Sec. 2. May distribute arms to volunteer companies.

§ 11. Whenever any of the public arms may be distributed, it shall be the duty of the governor to take bonds in the manner directed by the proviso to the second section of the act, to provide for the distribution of the public arms, among the different volunteer corps in this state, passed fourth January, 1827. [See § 5.]

Ib. Sec. 3. Governor to take bonds.

§ 12. The governor shall cause the assistant adjutant-general of each brigade to examine and inspect all the public arms which may be distributed or delivered to volunteer companies in his brigade, and for which bonds may be given, at least once in every year, and report their number, and the order in which said arms are kept, and also the

1828—(23) *Sec.* 4. Assistant adjutant-generals of brigades to inspect arms.

probable solvency of the makers of the bonds;—and on failure of any assistant adjutant-general to perform the said service, when and as required by the governor, he shall be liable to a fine of fifty dollars, to be recovered as other fines and forfeitures under the militia laws.

ASSESSOR AND COLLECTOR OF TAXES.

1827—(6) To be elected by the qualified electors.

§ 1. The assessors and tax-collectors for the different counties in this state, shall be elected by the voters qualified by the constitution to vote for members of the general assembly.

Ib. Sec. 3. On the first Monday in August.

§ 2. All elections for said officers shall be holden annually on the day of the general election, preceding the year for which said officers may be elected.

Ib. *Sec.* 4. Election, how conducted.

§ 3. The elections contemplated by this act, shall be conducted in the same manner and regulated by the same laws, as the elections for members of the general assembly.

Ib. Sec. 5. Sheriff to return election to judge of county court, and Judge to give certificate of election.

§ 4. It shall be the duty of the sheriffs to report the persons elected by virtue of this act, to the judges of the county courts of their respective counties, whose duty it shall be to give the person so elected a certificate of his election, so soon as the assessor and tax-collector thus elected shall comply with the laws now in force, by giving bond with security and taking the necessary oaths of office.

Ib. Sec. 7. Vacancy in office of assessor and collector to be filled by judge of county court, &c.

§ 5. In case of vacancy either by refusal to accept, or to give bond and security, death, resignation, or otherwise, it shall be the duty of the judge of the county court and commissioners of roads and revenue, to fill such vacancy, on giving ten days notice of the time thereof: *Provided*, that if the office of county court judge be vacant, the commissioners of roads and revenue shall make the appointment; and if a majority of them cannot agree, the appointment shall be made by the clerk of the county court; and if there be no clerk, by the justice of the peace residing nearest the seat of justice for the county in which such vacancy may exist.

1821—(34) *Sec.* 2. Assessor and collector to enter into bond. Amount of bond. To be recorded. Original to be transmitted to comptroller.

§ 6. Each assessor and collector shall, before he enters upon the duties of his office, give bond and security, to be approved by the judge of the county court, payable to the governor for the time being and his successors in office, in the penal sum, of double the amount of the taxes of the county, to be estimated by the judge taking such bond, conditioned for the faithful performance of the duties required of him while in office; and the judge shall cause said bond to be recorded in the office of the clerk of the county court; and the clerk shall thereafter transmit said bond to the comptroller of the state, to be by him safely kept in his office; and a certified copy of the record of said bond shall be good and sufficient evidence thereof, in case the original shall be lost.[1]

Ib. Sec. 3. Oath to be taken.

§ 7. The assessors and collectors respectively shall, before they enter upon the duties of their office, take and subscribe the following oath, to wit: "I, A. B. do solemnly swear (or affirm) that I will to the best of my knowledge and abilities, perform the duties of assessor and collector of the taxes of the county of ———, without partiality, favor, or affection: So help me God."

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[1] In case of the absence or incapacity of the judge, or when the office of judge is vacant, the bond may be taken by the clerk of the circuit court.—See "County Officers,"—§ 12.

1829—(7) *Sec. 4.* Assessor and collector re-elected, to produce receipt in full for taxes of the year preceding. Office vacated by failure.

§ 8. Should any assessor and tax-collector be re-elected to said office, it shall be his duty to present receipts in full from the state and county treasurers, for the taxes of the preceding year, together with his bond for approval, to the judge of the county court, on or before the first Monday in January after such re-election; and should such tax-collector fail to do so, it shall be the duty of said judge, to declare the office of such tax-collector vacant, which vacancy shall be filled as is provided by law.

Note.—The foregoing title relates only to the appointment and qualification of assessors and collectors. Their duties, which are multifarious, will be found under the heads of "Tavern-keepers," &c. and "Taxes."

ATTACHMENT.

1833—(22) On return of non est inventus, plaintiff may sue out alias or pluries capias or an attachment.

Defendant not appearing, plaintiff may have final judgment, or interlocutory judgment with writ of inquiry.

Property attached liable to the judgment, and execution for the residue.

§ 1. When a writ shall issue from any of the courts of this state, commanding the sheriff or other officer, to take the body of any person, to answer any civil action in said court, and the sheriff shall return that the defendant is not to be found within his county, the plaintiff may, at his election, sue out an attachment against the personal estate of such defendant, or an *alias* or a *pluries capias*, returnable in the same manner as original process. And if on the issuance of an attachment, the sheriff shall return any goods by him attached, and the defendant shall fail to appear, and plead within the time limited by the laws regulating pleadings, the plaintiff shall be entitled, if in an action of debt, to final judgment, and if an action sounding in damages, to an interlocutory judgment, and may execute a writ of inquiry at the succeeding term. And the goods so attached, if not replevied or sold, according to the rules hereinafter prescribed, for goods taken on original attachments, shall remain in the custody of the sheriff until final judgment, and then be disposed of in the same manner as goods taken on a writ of *fieri facias;* and if the judgment shall not be satisfied by the goods attached, the plaintiff shall have execution for the residue.

Who may issue attachments.

§ 2. Original attachments, foreign and domestic, may be issued by any judge of the circuit or county courts, or any justice of the peace.

Affidavit required before issuing an attachment.

§ 3. Every judge or justice, before issuing an attachment, shall require the party applying for the same, his agent, attorney or factor, to make affidavit in writing, that the person against wh[illegible] the attachment is prayed, absconds, or secretes him or herself; th[illegible]e or she resides out of this state; that he or she is about to remove out of this state, so that the ordinary process of law cannot be served upon him or her; or that he or she is about to remove his or her property out of the state, and that thereby the plaintiff will probably lose the debt, or have to sue for it in another state; and shall further require the person applying for an attachment, his or her agent, attorney or factor, to swear to the amount of the sum due the plaintiff, and that an attachment is not sued out for the purpose of vexing or harassing the defendant; and shall further require the plaintiff, his agent, attorney or factor, to give bond payable to the defendant in double the amount sworn to be due, conditioned that the plaintiff shall prosecute his or her attachment to effect, and pay the defendant all such damages as he or she may sustain by the wrongful or vexatious suing out of such attachment: which bond, together with the affidavit of the party complaining, his agent, attorney or factor, subscribed with the proper

Plaintiff's bond.

Bond and affidavit to be returned with attachment.

Duty of judges and justices to issue attachments.

name of the person making the same, shall be returned by the judge or justice taking the same, to the court or justice to which the attachment is returnable; and upon such bond and affidavit being made as hereinbefore provided, it shall be the duty of said judge or justice, to grant an attachment against the estate of such debtor, wherever the same may be found, in the hands of any person or persons, indebted to or having any of the effects of the defendant, or so much thereof as shall be of value sufficient to satisfy the debt or demand, and costs of the complainant; which attachment shall be deemed the leading process in such action, and the same proceedings shall be had thereon, as in judicial attachments. Every attachment issued without bond and affidavit, taken and returned as aforesaid, shall be abated on the plea of the defendant.

Attachment the leading process.

Attachment without bond or affidavit, to abate.

Over 50 dollars to be returnable to circuit or county court.

§ 4. Whenever the sum sworn to be due shall exceed fifty dollars, it shall be the duty of the person issuing the same, to make it returnable to the circuit or county court, as the party applying therefor may require.

Not exceeding 50 dollars, returnable before justice of the peace.

§ 5. Justices of the peace shall have the exclusive right of issuing attachments, where the sum sworn to be due, shall not exceed fifty dollars; and all such attachments shall be returnable before some justice of the peace, according to the laws regulating the return of process, issued by justices of the peace.

Form of an attachment.

§ 6. And to prevent errors in issuing attachments, and taking bonds thereupon, the attachment shall be in the following form, to wit:

State of Alabama. To the sheriff county greeting: Whereas, A. B. (or A. B. attorney, agent or factor, as the case may be, of C. D.,) hath complained on oath to one of the judges of the circuit court of the state of Alabama, (or judge of the county court of county, or a justice of the peace in and for the county of as the case may be,) that E. F. is justly indebted to him (or the said C. D.) to the amount of , and oath having been also made, that the said E. F. absconds or secretes himself; (or resides out of this state: or is about to remove himself out of this state, so that the ordinary process of law cannot be served upon him; or is about to remove his property out of this state, and that thereby the said A. B. or C. D. will probably lose the debt, or have to sue for it in another state,) and the said having given bond and security according to the directions of the act in such case made and provided, and made oath that an attachment is not sued out for the purpose of vexing or harassing the said E. F.: We, therefore, command you that you attach so much of the estate o[illegible] said E. F., if to be found in your county, (repleviable on security,) as shall be of value sufficient to satisfy the said debt and costs, according to the complaint: and such estate, so attached, in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, to be had at the court to be held for county, at upon the day of next; (or before me, or before esquire, a justice of the peace in and for said county, on the day of next;) so as to compel the said E. F. to appear and answer the above complaint of the said : when and where you shall make known to the said court (or justice) how you have executed this writ. Witness judge of said court, (or a justice of the peace in and for the county aforesaid,) at the day of in the year of our Lord, and of American Independence, the .

Which attachment shall be signed and sealed by the judge or justice granting the same. And the bond to be given on obtaining such attach-

Form of the bond.

And condition.

Not to abate for want of form.

ment, shall be in the following form, to wit: Know all men, that we and , all of the county of , (as the case may be) are held and firmly bound unto in the sum of , to be paid to said , his certain attorney, executors, administrators, or assigns. For which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators jointly and severally, firmly by these presents: sealed with our seals, and dated the day of in the year of our Lord, . The condition of this obligation is such, that whereas, the above bounden hath the day of the date hereof, prayed an attachment, at the suit of against the estate of the above named , for the sum of ; and hath obtained the same returnable to the court of , to be holden at , on the day of next (or before , a justice of the peace in and for the county of , at the office of the said justice on the day of .) Now, if the said shall prosecute his suit with effect, or in case he fail therein, shall well and truly pay and satisfy to the said all such costs and damages as shall be recovered and awarded against the said his heirs, executors, or administrators, in any suit or suits which may be hereafter brought, for wrongfully suing out the said attachment, then the above obligation to be void; otherwise to remain in full force and effect: *Provided nevertheless*, that no attachment shall be abated for want of form, if the essential matters expressed in the foregoing precedent be set forth in such attachment.

Attachment may issue though debt is not due.

Property liable to waste, may be sold.

Purchaser's bond.

Execution on the bond, if not paid.

§ 7. A writ of attachment may in all cases issue against the property of a debtor, legally subject to the process of attachment, although the debt or demand of the plaintiff be not due; which attachment shall be a lien on the property attached, until such debt or demand becomes due, when judgment shall be rendered and execution issued. But if the property so attached, be clearly of a wasting or perishable nature, then the same shall be sold, giving a credit on the sum until the debt or demand of the plaintiff becomes due, on the purchaser's giving bond with security for the payment of the purchase-money, which bond shall be lodged with the other papers in the cause; and if the money is not paid at the expiration of the time given, the clerk or justice shall issue execution thereon against the principal and security, or either of them; and the money when collected, shall be paid into the hands of the clerk or justice, to abide the final decision of the cause.

Perishable property may be sold if not replevied in 20 days.

15 days notice of sale. Order of sale to be returned, and proceeds paid over within 5 days after sale.

§ 8. When any estate attached shall, on the oath of the plaintiff, his or her attorney, or agent, or other creditable person, be certified to any judge or justice of the peace, to be likely to waste or be destroyed by keeping; and if the person to whom it belongs, his or her attorney, agent, or factor, shall not within twenty days after the levy of the attachment, replevy the same, then such estate shall, by the order of said judge or justice, be sold at public vendue by such officer; he having first advertised such sale at the court-house and two other public places in his county, at least fifteen days previously. And the officer shall, within five days after such sale, return the order of sale to the court or justice to which the attachment is returnable, with his proceedings thereon, and also at the time of making such return, shall pay over into the hands of the clerk or justice, all money arising from such sale, which money shall be subject to the judgment on the attachment. Any officer failing to return such order of sale as above directed, shall be liable to the like process of either the plaintiff or defendant, as officers are for failing to return writs of *venditioni*

Officer, how proceeded against for not returning order, or paying over money.

exponas; and any officer, who, after the expiration of the time allowed for paying the proceeds of the sale, shall neglect or refuse to pay the same on the demand of the clerk or justice, shall be subject to the like proceedings at the instance of the clerk or justice, as officers are for failing to pay over money levied upon a *fieri facias.*

Attachments allowed where plaintiff and defendant are both non-residents.

Security to be given in the state.

Additional oath required.

Restrictions as to process against non-residents.

§ 9. When any person being a non-resident of this state, is indebted to any person, also a non-resident, either by judgment, note, or otherwise, and removes his or her property into, or holds property in this state, which would be subject to attachment for the benefit of a resident of this state, the same benefit shall be extended to such non-resident, as is by law secured to persons residing within this state: *Provided,* That such non-resident shall give good and sufficient security, residing in this state, to be approved by the judge of the county court where the property or effects may be, or any judge or clerk of the circuit court, for the amount and with the like condition as required in other cases; and that in addition to the oath now required by law, such non-resident plaintiff, his agent or attorney, before obtaining any such attachment as is authorized by this act, shall swear that the defendant against whom such attachment is sued out, has not sufficient property within the state of the residence of said defendant, within the knowledge or belief of such non-resident plaintiff, his agent or attorney, wherefrom to satisfy such debt or demand: *And provided also,* That no judicial process shall be issued against the estate of any person residing out of this state, by any one, whether a resident or non-resident, unless such process is grounded on an original attachment; or unless the leading process in the suit has been executed on the person of the defendant, when within this state.

Attachments against non-resident partners, joint obligors, &c.

§ 10. When two or more persons, not residing in this state, are jointly indebted, either as joint obligors, partners, or otherwise; then the writ or writs of attachment may be issued against the separate and joint estate of such debtors, or any of them, either by their proper names, or by the name and style of the partnership, or by whatever other name or names such joint debtors shall be generally reputed, known, or distinguished within this state, or against the heirs, executors, or administrators of them or any of them; and the lands, tenements, goods, chattels and effects, rights and credits of such debtors or any of them, shall be liable to be seized and taken for the satisfaction of any such debt or other demand, and may be sold to satisfy the same.

On what, and how levied.

Goods may be replevied.

Right of property may be tried.

§ 11. Attachments may be levied on the defendant's goods and chattels, and the manner of executing an attachment shall be by the officer's going to the house in which, or to the person in whose possession the defendant's goods or effects are supposed to be, and then and there declaring, in the presence of one or more credible persons of the neighborhood, that he attaches the said goods or other effects; from and after which declaration, the goods, money and effects so attached, shall remain in the custody of the officer levying on the same, unless the defendant, his or her agent or attorney, or some other person, replevy the same, by giving bond and security in double the amount of the plaintiff's demand, conditioned that if the defendant be condemned in the action, he shall return the specific property attached, and in case he fail to do so, the securities will do it for him; or unless claim be made to the property levied on, and bond given to try the right of the same as in other cases, on which the same proceedings may be had as in trials of the right of property taken by virtue of a *fieri facias:* in which cases the officer shall suffer the property to remain in the possession, and at the risk of the defendant or claimant. And the said replevin bonds, or bonds for the trial of the right of property, shall be lodged with the clerk or justice where the attachment is returnable; and should any such bond be forfeited according to its conditions, the officer taking the same shall forthwith enter thereon the necessary endorsement of forfeiture, and the clerk or justice shall immediately issue execution on the same against all the obligors therein; which duties of clerks and other officers shall be performed under all the penalties and responsibilities prescribed in cases of the forfeiture of forthcoming bonds, and bonds for the trial of the right of property in other cases: *Provided*, That for satisfactory cause shown, any of the judges may supersede such execution, either wholly or in part, and upon such security as the judge granting the same may deem proper.

Execution to issue on replevin bonds, or bonds for trial of right of property, when forfeited.

Executions may be superseded.

§ 12. Whenever any officer may be required to levy an attachment, such officer may require the plaintiff in the attachment, to execute to him a bond of indemnity, in order to secure such officer, if it should afterwards appear that the property levied on does not belong to the defendant.

Officer levying attachment may require indemnity.

§ 13. Any person against whose estate an attachment has issued, his or her attorney, agent or factor, may, at any time before final judgment entered, or a writ of inquiry executed, upon giving special bail, replevy the estate so attached, and plead to issue, so that the plaintiff is not thereby delayed of his trial: *Provided*, That the defendant shall not be required to give special bail, before he is admitted to appear and plead.

Defendant may replevy any time before judgment.

May plead without special bail.

§ 14. If the inhabitant of any other government have no goods or chattels within this state, but has lands within it, the sheriff shall execute such attachment upon his lands or tenements, agreeably to the provisions of the act concerning executions; and in case of the death of any debtor residing out of the limits of this state, having lands or other property therein, the creditor resident within the territory shall in like manner be entitled to recover by attachment, against the executors and administrators; and execution shall issue accordingly against the property so left within the state.

Lands of non-residents may be levied on.

Executors and administrators liable, &c.

§ 15. When any process in the nature of an attachment shall issue, and the defendant resides without the limits of this state, and has no agent or attorney within the same, no judgment shall be rendered on such attachment, until six months after the issuance thereof, or until the defendant be notified by conveying a notice to him or her by mail, when his or her residence is known, or by advertising the same in the manner the judge or justice issuing the attachment may direct, when the defendant's residence is unknown, which notice, it shall be the duty of the judge or justice to cause to be given, when the same can conveniently be done, and all proceedings on the attachment may at the discretion of the court or justice, be stayed for such time as the circumstances of the case may require, not exceeding one year from the issuance thereof; and if the defendant appear, put in bail, and plead within the time limited for his or her appearance, his estate so attached shall be liberated, or if sold, the proceeds thereof refunded to him; and the garnishee or garnishees, if any, discharged; and it shall be lawful for the jury, in case of such non-residents, to give as damages legal interest upon the plaintiff's recovery, during the time of such extraordinary continuances.

Attachments against non-residents to be stayed.

Notice to defendant.

Stay not to exceed one year.

Estate discharged on bail and plea.

Interest during continuance.

§ 16. After judgment on attachment against non-residents, the plaintiff shall before sale, and after execution is awarded, find security, who shall undertake for him, that if the defendant in the attachment shall within a year and a day next following, by himself or

Plaintiff to give security before sale of non-resident's estate.

attorney, disprove or avoid the debt recovered by the plaintiff against him, or shall discharge the same with costs, that then the plaintiff shall restore to the defendant the goods or effects, or the value thereof, by the plaintiff attached and condemned, or so much thereof as shall be disproved or discharged, or else they will do it for him; which bond shall be taken and approved by the officer required to make the sale, and by him deposited with the other papers in the cause.

Plaintiff may amend defects of form.

§ 17. The attachment law of this state shall not be rigidly and strictly construed; and in all suits commenced by original attachment, the plaintiff, before or during the trial, shall be permitted to amend any defects of form in the original papers, should the judge or justice be satisfied that such defects were not made for the purpose of defrauding the defendant in such suit.

Who defendant, and who garnishee.

§ 18. The person whose goods or effects are attached, shall be called the defendant in the attachment, and the person in whose possession they are attached, shall be called the garnishee.

Garnishee shall be summoned.

§ 19. When any officer shall serve an attachment in the hands of any person supposed to be indebted to, or supposed to have any of the effects of the defendant, he shall at the same time, summon such person as a garnishee in writing, to appear at the court, or before the justice where the attachment is returnable, within the first four days of the first term of the court, if returnable to court, or at the time of the return of the attachment, if returnable before a justice of the peace, there to answer upon oath, what he or she is indebted to the defendant, and what effects of the defendant he or she has in his or her hands, and had at the time of serving the attachment, and what effects or debts of the defendant, there are in the hands of any other, and what person, to his or her knowledge or belief: And it shall be lawful upon his or her appearance and examination, to enter up judgment and award execution against any such garnishee for all sums of money acknowledged to be due to the defendant, from him or her; and for all effects and estate of any kind, belonging to the defendant, in his or her possession or custody, for the use of the plaintiff, or so much thereof as may be sufficient to satisfy the debt and costs, and all charges incident to levying the same; and all goods and effects whatsoever in the hands of any garnishee, belonging to any defendant, shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the officer serving the attachment.

Shall answer.

Proceedings against garnishees for contempt.

§ 20. Where any garnishee shall be returned by the officer, summoned in manner aforesaid, and shall fail to appear and discover on oath as by this act is directed, it shall be lawful for the court, and it is required after calling the garnishee, to enter a conditional judgment against him, upon which a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to show cause why final judgment should not be entered against him: And upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear according to the mandate thereof, and discover on oath in manner aforesaid, the court shall confirm such judgment, and award execution for the plaintiff's whole judgment and costs.

Judgment nisi and sci. fa.

Proceedings *vs.* garnishee before justice of the peace.

§ 21. When the attachment is returnable before a justice of the peace, the garnishee shall be required to appear at the return of the attachment, and answer upon oath, as in the foregoing section: and in case any garnishee so summoned shall fail to appear and answer as above required, the justice shall enter judgment by default against such garnishee; and if the garnishee appear and answer within ten days, said judgment shall be set aside, and such judgment entered as the justice of the case requires; but if the garnishee fail to appear within ten days after judgment by default, the justice shall issue a second summons, commanding the garnishee to appear at a time certain; and if the garnishee fail to appear at said time, final judgment shall be entered against him, for the amount of the plantiff's demand, and costs of suit, upon which execution shall issue.

§ 22. In all cases when any garnishee may have in his possession any property belonging to the defendent, or be indebted to him in any specific property, he shall be at liberty at any time within twenty days after final judgment entered against him as garnishee, to deliver the same to the officer serving the attachment, or holding the execution, in discharge of himself, and the same shall be sold to satisfy the judgment against the defendant. And it shall be the duty of the proper officer, to demand the property deposed to be due from, or in the possession of any garnishee, at the usual place of residence of such garnishee, within a reasonable time after the final judgment rendered.

Garnishee may discharge himself by delivering the property in 20 days after final judgment.

§ 23. If, upon the examination of any garnishee, it shall appear that there is any of the defendant's estate in the hands of any other person who has not been summoned, or that any other person is indebted to the defendant, the court or justice shall, upon motion of the plaintiff, grant a judicial attachment, to be levied in the hands of such person or persons, so holding property of, or indebted to the defendant, who shall appear and answer, and be liable as other garnishees.

If on examination of garnishee, any other appears to have property, or be indebted, he shall be summoned.

§ 24. The defendant may, in all cases, show by competent testimony, that a garnishee is indebted to him in a greater amount than he is willing to admit on oath.

Defendant may contest garnishee's answer.

§ 25. The plaintiff wishing to controvert the garnishee's answer, may do so by making oath, that he believes the same to be incorrect; whereupon, an issue shall be formed and tried as in other cases.

Plaintiff may contest answer.

§ 26. Every garnishee shall be allowed out of the effects attached, reasonable satisfaction for his attendance; and where no goods are attached, the same shall be taxed against the party causing such garnishee to be summoned.

Allowance to garnishees.

§ 27. All laws heretofore passed on the subject of attachments, except such as relate to the powers of courts over defaulting suitors and officers, and in enforcing their orders, judgments, and decrees, are hereby repealed.

Repeal of former laws.

ATTORNEYS.

§ 1. No person shall be permitted to practise as counsel or attorney at law, in any of the courts of this territory, without previously producing to the court a license; and in the presence of such court shall take an oath to support the constitution of the United States, and also the following oath of office:—"I, A. B. do solemnly swear (or affirm), that I will honestly demean myself in the practice as counsel or attorney; and will, in all respects, execute my office according to the best of my knowledge and abilities." And if any person shall presume to practise as counsel or attorney, without being licensed and qualified as aforesaid, he shall forfeit the sum of two hundred dollars for every cause he shall prosecute or defend, in any court in this territory, one-half to the use of the informer, and the other half to the

1807—(4) Attorneys to be licensed and sworn.

Oath of office.

use of the territory; to be recovered by action of debt in any court of record.[1]

Convicted felons not admitted to practise.

§ 2. Every person that hath already been, or shall hereafter be convicted of any felonious crime, shall be incapable of obtaining such license; or if licensed, the judges of any court in which such person may practise, on proof thereof being made to them, may suspend his license.

Judges of superior courts, may suspend or vacate license for malpractice.

§ 3. If the judges of the superior courts, from their own observation, detect any malpractice in the said courts, in any counsel or attorney of those courts; or if complaint in writing be made to them of such malpractice in the said courts, or in the county courts of any county, the party accused shall be summoned to show cause why an information should not be filed against him: and if such information should be ordered, and the counsel or attorney so offending should be found guilty of the matter therein charged, the said judges of the superior courts may either suspend his license during a certain time, or vacate it altogether, as they shall judge most proper; first ordering a jury to be empannelled for the trial of such information. And the judges of the superior and justices of the county courts, shall have power to fine any attorney for misbehavior or contempt offered to them, and may cause any attorney practising in said courts, to find security for his good behavior.

After information filed, and jury empannelled.

Liability of attorneys for contempt, &c.

Attorneys liable for neglect.

§ 4. If any suit shall be dismissed for the non-attendance or neglect of any attorney, practising either in the superior or county courts, not having a just and reasonable excuse, it shall be at his cost. And he shall moreover be liable for all damages his client may sustain, by such dismission, or any other neglect of his duty, to be recovered in any court of record.

Proceedings against attorney who refuses to pay over money received,

§ 5. Every attorney receiving money for his client, and refusing to pay the same when demanded, shall be proceeded against in a summary way, on notice before any court of record, in the same manner as sheriffs are, or may be liable to be proceeded against, for money received on executions.

or fails to enter an appearance.

§ 6. In all cases where the sheriff is, or may be authorized by law, to take the engagement of an attorney endorsed upon the writ, that he, such attorney, will appear for the defendant or defendants, every attorney thus entering into such engagement, who shall fail to enter an appearance agreeably thereto, shall forfeit to the defendant or defendants twenty-five dollars; for which judgment shall be immediately entered, and execution issued thereon.

Only two can argue on one side.

§ 7. The judges of the superior courts, and the justices of the county courts, shall not suffer more than two attorneys to argue on any side, in any suit.

Penalty for acting under power of attorney made before action brought.

§ 8. If any attorney, or other person practising as an attorney, shall presume to appear under any power of attorney, made before action brought, for confessing or suffering judgment to pass by default or otherwise, for any defendant in any court of record within this territory, he shall for every such offence, forfeit and pay two thousand dollars to such defendant, for his or her own use; to be recovered with costs by action of debt or information, in any court of record; and moreover shall be liable to an action for damages, at the suit of the party aggrieved.

Certain civil officers not to appear as attorneys.

§ 9. No justice of the peace, sheriff, or under sheriff, or clerk of any court, shall appear or plead as attorney for any person or persons whatsoever, in the court of the county whereof he is a member, officer, or clerk; except only as general attorney for any person or persons not residing or being within this territory, under penalty of being fined by such court, in the sum of fifty dollars for every such offence, to the use of the same county, towards lessening the levy thereof.

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[1] Attorneys are also required to take an oath against duelling.—See "Duelling."

§ 10. Hereafter no person shall be permitted by any court to practise therein as counsellor or attorney at law, unless he shall have obtained a license from the supreme court of this state;[1] and it shall be the duty of the said court, when application shall be made by any person for a license as aforesaid, on his producing satisfactory evidence that he sustains a good moral character, to examine or cause to be examined, in open court, the person so applying; and if, after such examination, it be the opinion of said court that he is duly qualified, it shall be the duty of the judges thereof to grant a license under their hands and seals, which shall be attested by the clerk of said court: *Provided*, That nothing in this act contained shall be so construed, as to affect any person who may have obtained a license from the governor of the Mississippi Territory, previous to the division of the same, and was an inhabitant of this state at the time of the adoption of the constitution; or from the governor of the Alabama Territory, or of this state; but such person shall be permitted to practise as counsellor or attorney at law, in any court of law or equity within this state, by virtue of such license.

1819—(7) *Sec.* 1. Supreme court to grant licenses.

Proviso.

§ 11. No judge or justice of any court, or sheriff, or under sheriff, shall appear or plead as attorney in any court in this state; and no clerk or deputy clerk of any court, shall practise as counsellor or attorney in the court of which he is clerk or deputy clerk, under the penalty of being fined by such court, in the sum of fifty dollars for every such offence, to be applied to the use of the county in which the offence shall have been committed.

Ib. Sec. 3. Officers of court restrained from practising as attorneys.

§ 12. When any person shall make application for a license to practise, and it shall be known to the judges of the supreme court, that he has presided as a circuit judge in this state, or the Mississippi Territory, it shall be the duty of the said court to grant him a license without examination.

1820—(1) *Sec.* 1. Persons who have presided as judges to be licensed without examination.

§ 13. Any two judges of the circuit courts in this state, may grant licenses to attorneys to practise in the circuit or county courts.

1821—(3) *Sec.* 1. Two judges of circuit court may grant licenses.

§ 14. Any judge or justice of the county court, who has been regularly licensed to practise law in this state, shall be allowed to practise in the circuit court of the county in which he resides: *Provided*, That he shall not be engaged directly or indirectly in any cause which may have been determined or tried before him.

1821—(6) *Sec.* 4. Judge of county court may practice in circuit court of his own county. Proviso.

§ 15. Such judges of the county courts as have been licensed to practise as attorneys at law in this state, are hereby authorized to practise law in the several courts of this state: *Provided*, That they shall not be absent at the time of holding any court, or on any return day, required by law for them to hold or appoint.

1824—(7) *Sec.* 1. And in the several courts of this state. Proviso.

§ 16. It shall not be lawful for the judges of the several county courts of this state, to appear or practise as attorneys at law, in any suit, for or against any administrator, executor, or guardian of the county whereof he is judge, nor shall he appear or practise as an attorney in any cause, matter, or suit, for or against any public officer in his official capacity, wherein it is the duty of such judge to take a bond for the faithful performance of such office, trust, or duty.

1823—(25) *Sec.* 1, Judge of county court not to practise where administrator, &c. is concerned.

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[1] So much of this section as *restricts* the power of granting licenses to the *supreme court*, is repealed.—See § 13.

1830—(4) Preamble.

Whereas the governor and legislative council of the Territory of Florida have, by their act, authorized counsellors and attorneys at law residing within this state, to practise law in the courts of that Territory under certain restrictions:

Sec. 1. Attorneys in Florida may practise in this state on certain conditions.

§ 17. *Be it enacted, &c.* That any counsellor or attorney at law residing within the Territory of Florida, is hereby authorized to practise law in the several courts of this state, upon producing to the court in which he may be desirous to practise, the certificate of some judge of a superior court of Florida, that he is legally authorized to practise in the courts of that Territory as counsellor or attorney, and that he sustains a fair and reputable character as such: *Provided,* he shall take and subscribe the several oaths prescribed by the laws of this state to be taken and subscribed by the counsellors and attorneys residing within this state.

ATTORNEY GENERAL AND SOLICITORS.

Con. Ala. Art. 5. *Sec.* 18. Elected by general assembly.

§ 1. There shall be an attorney general for the state, and as many solicitors as the general assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

1819—(9) *Sec* 1. Attorney general's residence and duties.

§ 2. It shall be the duty of the attorney general to keep his office at the place designated for the seat of the state government, and to conduct and prosecute in the supreme court, all suits in which the state may be concerned, and to give his opinion and advice in writing, or otherwise, on any question of law, when required by the governor, or when requested by the comptroller of public accounts, or the state treasurer, concerning matters which relate to their respective offices; and he shall also perform the duties of solicitor in the judicial circuit, embracing the place designated for the seat of the state government,

Emoluments.

and shall receive in addition to the salary established by law, the fees for prosecutions in such circuit, and in the supreme court, which are allowed to solicitors for the like services.

Ib. Sec. 2. Solicitors. Their number and duties.

§ 3. There shall be elected a solicitor for each judicial circuit in this state, (except the judicial circuit assigned to the attorney general) whose duty it shall be to prosecute in such circuit, all offenders against the state, and all civil actions in which the state may be concerned, (except before the supreme court) and who shall be entitled

Emoluments.

to receive, in addition to the salary established by law, the following fees:—On every conviction for any felony, (except murder) ten dollars; on every conviction for petit larceny, ten dollars; on every conviction for unlawful gaming, or for unlawfully permitting the same,[1] or for unlawfully keeping a billiard-table, twenty dollars; on every conviction for perjury, twenty dollars; on every conviction for forgery, counterfeiting coin or any bank note, or for feloniously uttering or offering any counterfeit coin, bank note, writing obligatory, or other instrument of writing, or forwarding or assisting in any of said offences, twenty dollars; on every conviction for maim, or for an assault, with intent to commit murder, rape, or robbery, fifty dollars; on every conviction for an assault and battery, or affray, five dollars; on every other conviction, on indictment or presentment, five dollars; and for every exhibition of a faro-bank, or any other kind of gaming, fifty dollars; for every person who knowingly suffers unlawful gaming in his house, fifty dollars. And it shall be the duty of the clerk to tax the fees aforesaid, in the bill of costs, which, when collected, shall be paid to the solicitor.

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[1] The attorney-general and solicitors are allowed on convictions for gaming, under the act of 1828, double the fees given by this act.—See "Gaming,"—§ 22.

Ib. Sec. 3. Attorney general or solicitor failing to attend, the court may appoint an attorney to prosecute. Compensation therefor.

§ 4. If the attorney general, or any solicitor shall fail to attend at either of the courts when it may be his duty to attend, the judge or judges of the same are hereby authorized, from time to time, as he or they may think fit, to employ an attorney to prosecute for the state, who shall be paid by the attorney general or solicitor in whose stead he may act, such compensation as shall be directed by the court before whom the services shall be rendered.

1827—(30) *Sec.* 1. Solicitors to reside in their circuits.

§ 5. It shall be the duty of the several solicitors in this state, to reside within the judicial circuits for which they may have been elected.

Ib. Sec. 2. On failure, office vacated, and to be filled by the governor. Proviso.

§ 6. If any solicitor fail to remove into and reside in his circuit, as aforesaid, he shall vacate his said office, and it shall be the duty of the judge risiding in the circuit for which such solicitor has been elected, to notify the governor of such non-residence, who shall forthwith fill such vacancy: *Provided*, That twelve months be allowed any solicitor residing out of the circuit in which he holds his office, to remove into the same.

AUCTIONEERS.

1818—(16) *Sec.* 2. Penalty for exercising the trade of auctioneer unlawfully.

§ 1. No person shall exercise the trade or business of an auctioneer, by the selling of any goods, wares, or merchandise whatsoever, by auction, or any other mode of sale, whereby the best or highest bidder is deemed to be the purchaser, unless such person shall have a license, issued pursuant to the directions of this act,[1] on pain of forfeiting for every such sale at auction, the sum of twenty dollars, together with the sums or duties payable by this act upon the goods, wares, and merchandise, so sold: *Provided however*, That nothing herein contained shall be construed to require a license for the sale at auction of any estate, goods, chattels, or other thing, which by this act are not made liable to duty, or exempted from duty.

1824—(26) *Sec.* 1. Number of auctioneers in Mobile, and Madison six:—other counties three.

§ 2. The number of auctioneers hereafter to be appointed and licensed for the city of Mobile, shall not exceed six, and for each of the other counties in this state, the number shall not exceed three, except Madison county, in which the number may be six, who shall be appointed and licensed in the same manner, shall hold their appointments for the same period, and be subject to the same restrictions and obligations as are provided by the act concerning the appointment of public officers, passed December twentieth, 1820,[2] and the act regulating sales at auction, passed November twenty-first, 1818.[3]

Ib. Sec. 2. To give bond.

§ 3. Every auctioneer hereafter to be appointed and licensed for said city, shall give bond with good and sufficient securities, in the penal sum of ten thousand dollars, and for each of the other counties in this state, in the penal sum of two thousand dollars, to be approved of by the judge of the county court of the county, in which the license or licenses shall be granted, made payable to the governor for the time being, and his successors in office, to be filed in the office of the comptroller of public accounts, conditioned, that he will render quarter yearly, in the city of Mobile, that is to say, on the first Mondays of January, April, July, and October of each year, during the term of his appointment, and in the other counties in this state, at the times required by the law relating to sales at auction, passed in eighteen hundred and eighteen,[1] to the assessor and collector of the county in which he may be appointed, an accurate and particular account, in writing and on oath, of all sales of goods, wares, and merchandise, subject to auction duties, made by him during the three months immediately preceding the date thereof; and that he will thereupon immediately pay over to the said assessor and collector of taxes, the amount of duties accruing upon such sales.

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[1] For the mode of appointing auctioneers, and their term of office, see "County Officers,"—§ 3, 4, 7, and 8.

[2] See "County Officers,"—1820—(26).

[3] The act from which the preceding section is taken, and which concludes this title.

Condition of bond.

Ib. Sec. 3. Penalty for failing to make returns or payments.

§ 4. If any such auctioneer shall fail to make the returns or the payments hereby required to be made, in the manner and at the periods respectively therein prescribed, he shall in addition to the penalty contained in his official bond, forfeit for every such failure, the sum of five hundred dollars, to be levied and collected in the manner hereinafter provided for.

Ib. Sec. 4. Mode of collecting duties in arrear and forfeitures.

§ 5. The duties in arrear on sales at auction, and all forfeitures accruing under this act, may be collected in the manner provided by law for the collection of the state and county taxes; and the assessor and collector of taxes, for the county in which he may be appointed, shall receive the same rates of compensation on all collections of auction duties, as he is entitled to receive on the collection of the state and county taxes.

1818—(16) *Sec.* 4. Duties to be paid to tax collector, and account to be rendered on oath.

§ 6. The accounts to be rendered, and the duties to be from time to time paid as aforesaid, by any auctioneer, shall be rendered and paid to the tax-collector of that county in which such sales shall have been made, and every auctioneer shall make oath or affirmation, according to the best of his knowledge and belief, to the truth of every account which he shall render before the officer to whom such account shall be rendered, and who is hereby authorized to administer the said oath or affirmation; in default of which, such account shall not be deemed to be duly rendered, according to the condition of the bond of such auctioneer; and, to the end that such accounts may be accurately kept and rendered, it is hereby made the duty of every auctioneer, to enter from day to day, as often as any sale shall be made, in a book, or on paper, to be kept by him for that purpose, the amount and particulars of the respective sales by him made, which book or papers shall at all reasonable times, upon request made, be submitted for examination to the officer to whom the account is to be rendered and duties paid, on pain of forfeiting, for every refusal to comply with such request, the sum of twenty dollars. Sales to be entered in a book. Forfeiture.

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[1] The act of 1818, here referred to, recites the condition of the bond required to be given by auctioneers, as follows :—" Conditioned that he will, on the *first day of January and July,* in each year, while he shall continue to exercise the said trade or business, render to the person or persons who, under this act, shall be authorized to receive the same, a true and particular account in writing, of the moneys or sums for which any goods, wares and merchandise, made liable to duty by this act, have been sold at every sale at auction by him made, and of the several articles, lots, and parcels, which shall have been sold, the price of each article, lot, or parcel, in every such sale, by whom bought, that is to say: first, from the date of such bond until such of the aforesaid days as shall accrue next thereafter; and thenceforth from the day to which an account shall have been last rendered, until such of the said days as shall next thereafter ensue; and so on in succession, from one of the said days to another, so long as he shall continue to exercise his said trade or business ; and also, shall pay over all such sums of money as may arise upon said sales, in manner as shall be hereinafter provided, *which sums he is hereby authorized and directed to retain out of the produce of each sale made as aforesaid.*"

An act passed January 26th 1829, entitled " An act the better to secure the collection of the state revenue," requires all auctioneers without distinction, to render an annual statement to the comptroller of public accounts, by the second Monday in December, of all sales subject to auction duties, made between the first day of November immediately preceding, and the first day of November of the year previous. (See "Taxes,"—§ 67). So much, therefore, of the acts of 1818, and 1824, as recites the duty of making a quarterly or semi-annual return, among the conditions of the auctioneer's bond, is impliedly repealed.

§ 7. Every auctioneer, out of the proceeds of the duties which he shall retain and pay as aforesaid, shall be allowed a commission of one per centum upon the amount thereof, for his trouble in and about the same. *Ib. Sec.* 5. Commission.

§ 8. If any auctioneer shall wilfully swear or affirm falsely, touching any matter, hereinbefore required to be verified by oath or affirmation, he shall suffer the pains and penalties which by law are prescribed for wilful and corrupt perjury; and shall moreover forfeit his office, and be incapable of afterward holding any office under the Alabama territory. *Ib. Sec.* 6. Penalty for false oath or affirmation.

§ 9. It shall be the duty of the tax-collectors aforesaid, in their respective counties, to collect the duties imposed by this act, and to prosecute for the recovery of the same, and for the recovery of any sum or sums which may be forfeited by virtue of this act, and pay the same into the territorial treasury; and all fines, penalties, and forfeitures, which shall be incurred by force of this act, shall be sued for and recovered in the name of the Alabama territory, or of the tax-collector within whose county any such fine, penalty, or forfeiture shall have been incurred, by bill, plaint, or information; one moiety thereof to the territory, and the other moiety thereof to the use of the person who, if a tax-collector, shall first discover, if other than a tax-collector, shall first inform of the cause, matter or thing, whereby any such fine, penalty, or forfeiture, shall have been incurred, before any court of law within the Alabama territory, having jurisdiction thereof. *Ib. Sec.* 7. Collector to prosecute and pay into the treasury.

Note.—For the duties chargeable on goods, &c. sold at auction, See "Taxes,"—§ 7.

BAIL, IN CIVIL CASES.

Bail in Criminal Cases.—See "Criminal Law,"—§ 38, 39, 40.—"Prisons and Prisoners,"—§ 26.

§ 1. In all actions to be commenced in any court of record in this territory, and founded on any specialty, bill or note in writing, signed by the defendant, or on the *judgment* of any court, foreign or domestic, and the nature of such action endorsed on the writ, attested by the clerk, or attorney for the plaintiff, setting forth the dates of such specialties, bills, notes, or *judgments*, and the sum or sums which appear thereby secured and unpaid, the defendant or defendants shall be held to bail of course, for the sum or sums so endorsed; and in all 1811—(11) *Sec.* 5. How and in what cases defendants may be held to bail. Suits on judgments.

Actions of account, covenant broken, and verbal contracts.

actions of account, covenant broken, and actions founded on *verbal contracts* and assumpsit in law, in which the plaintiff or other credible person can ascertain the sum or sums due, or damages sustained, and either of them make affidavit thereof, to the best of his or her knowledge and belief, the clerk of the court in which the writ issues, or the attorney for the plaintiff shall endorse on the writ the sum so sworn to, and the defendant or defendants shall be held to bail, for the sum or sums so endorsed by the clerk, or attorney for the plaintiff, or attested by the justice of the peace taking such affidavit; and it shall be the duty of the plaintiff or his attorney, or the clerk, to file such affidavit forthwith, in the clerk's office from which such writ may issue: *Provided*, That executors and administrators, when sued in such capacity, and persons sued on such penal statutes as do not expressly require bail, shall not be held to bail in such suits.[1]

Proviso as to executors, &c. and penal statutes.

1818—(2) *Sec.* 11. In actions sounding in damages, clerk may order defendant to be held to bail.

§ 2. In all actions sounding in damages, it shall be lawful for the clerk of the court in which such action is commenced, or any justice of the quorum of the county where such suit may be instituted, to order the defendant or defendants to be held to bail in such sum as may seem proper, on the affidavit of the plaintiff, or other credible person, setting forth satisfactory reasons for praying such order: *Provided however*, That it shall be the duty of the court to which such writ may be returned, on application at the first term thereof after the commencement of such action, supported by satisfactory proof, to discharge the bail taken under such order, or reduce the amount for which bail may have been required.

Court may discharge or reduce such bail at return term.

1823—(6) *Sec.* 1. Suits founded on bill, bond, note, or account.

§ 3. In no case where any action, or actions may be commenced in any of the courts of record in this state, or before any justice of the peace in and for any county in this state, and founded on any bill, bond, note, or account, shall the defendant or defendants be held to bail, unless the plaintiff, his attorney or agent, shall first make oath, in writing, before some judge, justice of the peace, or the clerk who may issue the process, that the defendant or defendants is indebted to the said plaintiff or plaintiffs, in the sum of   , by bill, bond, note, or account, and that he, she, or they, do not require bail for the purpose of vexing or harassing the defendant or defendants; which affidavit shall be filed in the office from whence the process issued. And the clerk of the court in which the writ issued, or the attorney for the plaintiff, or the justice of the peace who may issue the summons, shall endorse on the writ or the summons the sum so sworn to.

1827—(12) *Sec.* 1. Defendant may be held to bail *after* suit brought.

§ 4. When suit shall be commenced in any of the courts of this state, or before any justice of the peace, and the defendant or defendants shall not be held to bail, and the plaintiff or plaintiffs shall afterwards deem it necessary for the security of his, her, or their claim or demand, the clerk of the court or justice of the peace, where such suit shall be pending, shall, on the plaintiff, his, her, or their attorney or agent making the affidavit required by the existing laws, at any time previous to final judgment, issue a writ of *capias ad respondendum*, to the sheriff, coroner, or constable, requiring him to arrest and detain the body of the defendant or defendants in his custody, until he or they shall put in bail for his or their appearance, or be otherwise discharged by due course of law: *Provided*, That the said plaintiff so applying, shall pay the expense of issuing said writ of *capias ad respondendum*, and the execution thereof, unless the plain-

Second capias to be at plaintiff's expense, unless, &c.

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[1] This section, so far as it relates to suits founded on any "*bill, bond, note, or account*," is expressly repealed by the act of December 9, 1823, (See § 3.)—In other respects, it appears to be still in force.

tiff making application for a new writ requiring bail, make affidavit that the defendant is about to abscond from the county.

Ib. Sec. 2.
Bail in suits by petition and summons.

§ 5. In all suits where the process is by petition and summons, (as now allowed by law,) the defendant or defendants may be held to bail by an affidavit for that purpose, in like manner, and under the same rules and regulations; and such bail shall be liable in the same way as if such suit had been commenced by writ of *capias ad respondendum.*

1832—(13)
Sec. 2.
In *qui tam* actions.

§ 6. In all *qui tam* actions, the defendant or defendants may be held to bail in the same manner as bail is now required by law in actions of debt and assumpsit.

1827—(20)
Sec. 1.
Plaintiff demanding bail to give security for costs.

§ 7. In all cases, when any plaintiff or plaintiffs may wish to hold any defendant or defendants to bail, in civil cases, such plaintiff or plaintiffs shall give security for the costs of suit.

1807—(9)
Sec. 2.
Defendant unlawfully held to bail, how discharged.

§ 8. Every person unlawfully held to bail, may be discharged therefrom, on motion to the court, into which the writ is made returnable, and filing common bail. And in every action wherein bail is not required, the process may be by *capias ad respondendum*, and it shall be endorsed thereon by the clerk or plaintiff's attorney that "no bail is required," to which an appearance may be effected by filing common bail.. And when any writ shall issue from any of the said courts, or any warrant from a justice of the peace, whereupon bail is required, the sheriff or other officer, to whomsoever the same may be directed, shall take a bail-bond with sufficient security or securities in the penalty of double the sum for which bail is required by the endorsement on such writ or warrant; which said bond, the sheriff or other officer shall return with such writ. (1) And in case the sheriff or other officer shall neglect to take such bond, or the bail returned shall be held insufficient, on exception taken and entered, the same term to which such writ shall be made returnable, the sheriff or other officer having due notice of the taking exception, shall in either case be deemed and stand as special bail; and the plaintiff may proceed to judgment against such sheriff or other officer, as in other cases against special bail. (2)

Sheriff to take bail-bond in double the amount endorsed.

Or failing, to stand special bail on exception taken, and notice.

Ib. Sec. 3.
Sheriff to assign bail bond.
Form of assignment.

§ 9. All bail bonds returned to any of the said courts, shall be assigned by the sheriff, or other officer returning the same, by endorsement thereon, in the following form, to wit. "I, A. B. sheriff (or coroner as the case may be) of the county of   do hereby assign the within obligation and condition to C. D., his executors and administrators, to be sued for according to the statute in such cases made and provided. In witness whereof, I have hereunto set my hand and seal, this   day of   in the year of our Lord,   ." And any sheriff or other officer, failing to make such assignment, shall be deemed and held as special bail, in the same manner as if no bail had been taken.

Or to stand special bail.

Ib. Sec. 4.
Proceedings on return of defendant in custody.

§ 10. Where any sheriff shall return, that he hath taken the body of the defendant, and committed him to the prison of the county in which the arrest was made, (which is hereby declared to be the proper prison for confinement,) the plaintiff may enter the defendant's appearance; and he shall be at liberty to plead, as if such appearance had been entered by himself; and the plaintiff may proceed to judgment as in other cases. *Nevertheless* the defendant shall not be discharged

How discharged.

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(1) A bail-bond conditioned for the defendant's appearance, at a day different from that prescribed by law for holding the court, is void: Allen *v.* White, *Min. Rep.* 289.

(2) Sheriff failing to take bail, is not liable as special bail, unless duly notified of exception taken. Neal *v.* Gaines, 1 *Stewt. Rep.* 158.

out of custody, but by putting in bail, or by rule of court, or special order of one of the territorial judges.

Ib. Sec. 5. Bail may arrest and surrender principal in discharge of himself.

§ 11. The bail shall have liberty at any time before final judgment obtained against him, to surrender to the court, from which the process issued, or to the sheriff returning such process, during the sitting of such court, or to the sheriff in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such judgment, have full power and authority to arrest the body of his principal, and secure him, until he shall have an opportunity to surrender him to the sheriff who made the arrest, or his successor in office, or to the court to which the process was returnable. And such sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given.[1]

Sheriff to receive, &c.

Ib. Sec. 6. Recognizance of special bail.

§ 12. It shall be lawful for the defendant in any action where special bail is required, to go before any one of the territorial judges, or a justice of the peace for the county wherein the suit was originated, and enter into a recognizance of special bail, in the following form, to wit:

Form.

"Be it known, that on the   day of   in the year of our Lord,   , came A. B. before me C. D. a justice of the peace in and for the county of E. and undertook, in behalf of F. G. to be his special bail in an action of   now depending in the court of the said county of E. wherein H. I. is plaintiff, and the said F. G. defendant. And in case the said F. G. should be cast in the action, he shall pay and satisfy the condemnation of the court, or surrender his body in custody; or that the said A. B. will do it for him. Given under my hand and seal the day and year above written. C. D." Which recognizance of special bail shall be filed in the clerk's office, among the papers in the suit, to which it has reference. But the plaintiff may object to the sufficiency of the bail at the succeeding court, of which objection the defendant shall have ten days notice, previous to the day on which such objection is intended to be made: *Provided*, the recognizance of bail be filed fifteen days before the court, at which such objection should be made. And if the court shall be of opinion, that the bail is not sufficient, the suit shall remain in the same situation as if no such recognizance had been filed.

Recognizance to be filed with other papers.

May be objected to.

Ib. Sec. 7. Bail taken under this act, special bail. Bail's liability.

§ 13. All bail taken according to the directions of this act, shall be deemed, held, and taken as special bail, and as such, be liable to the recovery of the plaintiff. But the plaintiff shall not proceed against such bail until execution hath been returned, that the defendant is not to be found in his proper county, when the plaintiff may proceed against such bail, as is usual to proceed against special bail in other cases. And the bail shall have liberty at any time before the return of the first *scire facias* against them, returned "*scire feci*," or of the second returned "*nihil*," to render the principal in discharge of his bail, on payment of costs however, in either case of such *scire facias*. And such render, if made in term time, shall be to the court from whence the process issued, and if in the recess of such court, to the officer who made the arrest; which officer is hereby required to receive such render, and execute to the bail a certificate thereof; and hold the body of the defendant in custody, as if no bail had been taken. And such render and commitment, duly certified to the clerk in vacation, or entry of render in open court in term time, and in either case, notice thereof given to the plaintiff, or his attorney, shall discharge the bail. And the bail shall have full power and authority

Privilege of bail to render principal.

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[1] The surrender may be made any time before final judgment obtained against the bail on a *scire facias*.—See § 18.

to arrest the body of the principal, and secure him, to enable them to render him as aforesaid: *Provided however*, that if such render be made before final judgment against the principal, the court or sheriff, to whichsoever such surrender shall be made, are hereby authorized to take the defendant's recognizance of special bail, with such other sufficient bail as he may offer; and if taken by the sheriff, he shall file the same in the court where the suit is depending, on the first day of the next term; and the bail therein shall be liable to exception, in the same manner as bail in the original bail-bond. And the bail shall have the same privileges, and be subjected to a recovery in the same manner.[1]

If render made before final judgment, new recognizance may be taken.

Ib. Sec. 8. Proceedings against bail on *scire facias*, &c.

§ 14. When any *scire facias* shall by the proper officer be returned to have been made known to the bail; and they, in consequence thereof shall appear, they shall be obliged to plead, and the issue shall be tried the same term to which the process shall be returned, unless sufficient cause be shown to the court to the contrary; but the bail shall not be admitted to plead *non est factum*, unless they first file an affidavit of the truth of their plea: *Provided nevertheless*, that if any sheriff shall return on any *scire facias* to him directed, that the principal is imprisoned by virtue of any process, civil or criminal, the court to which such *scire facias* is returnable, shall, on motion of the plaintiff or bail, order and direct that such principal be retained where he shall be a prisoner, until the plaintiff's judgment and cost be satisfied, or he or she be otherwise discharged by due course of law: a copy of which order being served on the keeper of such prison, before such prisoner's releasement, shall be sufficient authority for him to retain such prisoner, until such order be complied with, and shall be deemed a surrender of the principal, and a discharge of the bail.

If sheriff return, that principal is imprisoned on other process, court may, on motion, order him to be retained.

1811—(1) *Sec.* 5. Bail may obtain judgment by motion against person for whose appearance they were bound for amount paid.

§ 15. In all cases where judgment shall be entered up, in any of the courts of record in this territory, against any person, as bail for the appearance of another, to defend any suit depending in such court, and the amount of such judgment, or any part thereof, hath been paid, or discharged by such bail, his, her, or their heirs, executors, or administrators, it shall be lawful for such bail, his, her, or their executors, or administrators, to obtain judgment by motion against the person, or persons, for whose appearance they were bound, his, her, or their heirs, executors, or administrators, for the full amount of what shall have been paid by the said bail, his, or her heirs, executors, or administrators, in any court where judgment may have been entered up against such bail: *Provided always*, That no judgment shall be obtained by motion aforesaid, unless the party or parties, against whom the same is prayed, shall have ten days previous notice thereof.

Ten days notice to be given.

1821—(26) *Sec.* 4. Common bail may have judgment by motion.

§ 16. In all cases where judgment shall be entered up in any of the courts of record, or by any justice of the peace, against any person, as common bail for the appearance of another, to defend any suit, depending in such court, and the amount of such judgment, or any part thereof, hath been paid or discharged by such common bail, his, her, or their heirs, executors, or administrators, it shall be lawful for such common bail, his, her, or their heirs, executors, or administrators, to obtain judgment by motion, against the person or persons for whose appearance they were bound, his, her, or their heirs, executors, or administrators, for the full amount of what shall have been paid, by the said common bail, his, her, or their heirs, executors, or administrators, in any court, or before any justice of the peace, where judg-

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[1] See the last note.

Ten days notice to be given. If over 50 dollars, jury required.

ment may have been entered up against such common bail: *Provided always*, That no judgment shall be obtained on motion as aforesaid, unless the party or parties, against whom the same is prayed, shall have at least ten days previous notice thereof: *And provided also*, That in all cases, no judgment shall be entered up, on motion as aforesaid, when the amount exceeds fifty dollars, unless by a lawful jury it shall be so awarded.

1812—(16) *Sec.* 2. Bail may defend suit. Judgment in detinue. Sheriff, when special bail by delinquency, may defend suit. Proceedings in case of sheriff's death.

§ 17. In all actions where bail is required, and where any original process in such cases is returned, "executed," if the defendant shall fail to appear according to the commands thereof, the bail in such action may defend the suit, and shall be subject to the same judgment and recovery, as the defendant might or would have been subject to; and in actions of detinue, the bail shall be subject to the restitution of the thing sued for, or the alternate value, according to the judgment of the court; and the bail-piece shall be so altered, in such cases, as to authorize the bail, in addition to the privileges already allowed him by law, to restore the thing sued for; and if the sheriff in such cases shall not take or return bail as required of him, or the bail returned shall be judged to be insufficient by the court, and the defendant shall fail to appear and give bail in such case, the sheriff, in addition to the privileges already allowed him by law, shall have the like liberty of defending such action, and shall be subject to the same recovery as is provided above for the bail; and if the sheriff depart this life before judgment be confirmed against him, in such case the judgment shall be confirmed against his executors or administrators; or in case there be no executors or administrators, or no certificate of probate, or administration granted, then judgment may be confirmed against his estate, and a writ of *fieri facias* may in either case be issued in the name of such deceased sheriff, as if he were living, and be levied on his estate.

Ib. Sec. 3. Explanation of former act on the privilege of bail to surrender principal. a *See* § 11 *and* 13. Bail may plead death of principal in bar to *sci. fa.*

§ 18. The true intent and meaning of the fifth and seventh sections of an act entitled "An Act concerning bail in civil cases,"[a] as to the privilege of the bail in surrendering his or their principal, is, and shall be construed to be, that the bail shall have liberty at any time before final judgment obtained against him on a *scire facias*, to surrender to the court from which such process issued, or to the sheriff returning such process during the sitting of such court, or to the sheriff, in the recess of such court, the principal, in discharge of himself; and the bail in any action, shall have a right to plead in bar to any *scire facias* against him, her, or them, the death of the principal at any time previous thereto: and if on the trial of any such issue, it shall be found that the principal is not living, judgment shall be given in favor of the defendant to such *scire facias*.

1829—(2) *Sec.* 5. Bail and delivery bonds, taken by constables to be payable to plaintiff.

§ 19. All bail-bonds, and delivery bonds, taken by constables, shall be taken payable to the plaintiff in the action, and returned with the other papers in the suit, and proceeded on for forfeiture, as now provided by law.

BANKS.

1821—(27) Notes of specie-paying banks only, receivable in payment of taxes or fines.

§ 1. No bill or note of any bank whatsoever, shall be receivable at the treasury of this state in payment of taxes, nor be receivable in payment of fines and forfeitures, which may accrue to the state or to the counties respectively, unless at the time of making such payments, the bank whose bills or notes are so offered in payment, is in the regular course of redeeming its notes and bills with specie, according to their nominal value.

§ 2. The bearer of any bill or note issued by any incorporated bank within this state, may, at any time, present such bill or note at such bank for payment; and in case of failure or refusal to make payment, according to the tenor and effect of said bill or note, it shall be lawful for such bearer, by himself, his agent, or attorney, to move the circuit or county court, of the county where such bank is situated, for judgment against said bank; whereupon the said court shall without delay render judgment and award execution for the amount expressed in said bill or bills, note or notes, with legal interest from the time of the demand of payment, and until finally paid, or the amount of such judgment be made, by due course of law, and costs of suit: *Provided*, That notice of such intended motion be served on the president, or cashier, or person acting as cashier of said bank, ten days previous to the hearing of such motion, which notice shall be served by the sheriff of the county, who shall make a regular return of the same: *And provided*, That the plaintiff prove such presentment of the bill or note, and the failure or refusal of payment, or in lieu of such testimony, produce the protest of a notary-public showing these facts: *And provided also*, That if the said bank may wish to make defence, and contest the plaintiff's motion, the court shall instantly empannel a jury to try the issue, and therein give judgment accordingly. All motions under this act, shall be tried the first term, having preference of all other causes.

Notes, how presented.

Payment refused.

Court may render judgment against bank on motion.

Proviso.

Notice of motion, how served.

What holder of note must prove.

Bank may defend.

Motion to be tried first term.

§ 3. If any incorporated bank within this state, shall not make regular specie payments for any of the bills or notes it may have issued, the governor of the state shall give information of the fact to the solicitor of the circuit in which the bank may be situated, directing him forthwith to proceed against the said bank on a writ of *quo warranto*, requiring it to show cause why its corporate powers, privileges, and immunities, should not be adjudged to be forfeited, and the said bank dissolved. And the court determining the case, shall have power to adjudge and decree concerning the same, according to law and usage, and to declare the charter of such bank forfeited; and also to make such orders consequent thereupon, in relation to the estate and effects, rights and credits of such bank, as shall secure the rights of all concerned. And the governor shall associate with the solicitor such other counsel as he may deem proper.

When governor may direct solicitor to proceed on *quo warranto*.

Court may make order concerning effects, &c. of delinquent bank.

Additional counsel.

BANK OF THE STATE OF ALABAMA.

§ 1. One state bank may be established, with such number of branches as the general assembly may, from time to time, deem expedient: (1) *Provided*, That no branch bank shall be established, nor bank charter renewed, under the authority of this state, without the concurrence of two-thirds of both houses of the general assembly; and provided, also, that not more than one bank nor branch bank shall be established, nor bank charter renewed, at any one session of the general assembly, nor shall any bank or branch bank be established, or bank charter renewed, but in conformity with the following rules.

Con. Ala. Art 6.

Establishment of banks.

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(1) Since the adoption of the constitution in this state, the right to exercise banking powers is a franchise: The State *v.* Stebbins et al., 1 *Stewt. Rep.* 299.

Rules for the establishment of banks and branches.

1. At least two-fifths of the capital stock shall be reserved for the state.
2. A proportion of power in the direction of the bank shall be reserved to the state, equal at least to its proportion of stock therein.
3. The state, and the individual stockholders, shall be liable, respectively, for the debts of the bank, in proportion to their stock holden therein.
4. The remedy for collecting debts shall be reciprocal, for and against the bank.
5. No bank shall commence operations until half of the capital stock subscribed for, be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.
6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed by said bank, at the rate of twelve per cent. per annum, from the date of such demand, unless the general assembly shall sanction such suspension of specie payments, and the general assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the rights of all concerned, and to declare the charter of such bank forfeited.
7. After the establishment of a general state bank, the banks of this state now existing, may be admitted as branches thereof, upon such terms as the legislature and the said banks may agree, subject, nevertheless, to the preceding rules.

1823—(17) Preamble.

Whereas it is deemed highly important to provide for the safe and profitable investment of such public funds, as may now, or hereafter be in the possession of the state, and to secure to the community, the benefits, as far as may be, of an extended and undepreciating currency:

Bank established.

§ 1. *Be it therefore enacted*, &c. That a bank shall be, and is hereby established, in the name, and for the benefit of the state, to be known under the name and style of the "Bank of the State of Alabama," and the faith and credit of the state are hereby pledged for the support of the said bank, and to supply any deficiency in the funds hereinafter specifically pledged, and to give indemnity for all losses arising from such deficiency.

Faith and credit of the state pledged for its support.

University moneys to constitute part of the capital. Governor, president and directors to issue stock to trustees of university.

§ 2. The moneys arising, or which may have arisen from the sale or rent of the lands given to this state, by the congress of the United States, for the support of a seminary of learning, shall form, compose, and constitute a part of the capital of said bank; and the governor, for the time being, together with the president and directors of the said bank, or a majority of them, shall be authorized and required, for and in behalf of the state, and with a pledge of the public faith and credit, to issue to the trustees of the university of Alabama, state stock, or certificates of debt, bearing an interest of six per cent. per annum, payable half yearly to the said trustees, or kept subject to their order, according to the laws of the state, to the amount of such sum or sums, as may be from time to time paid over by the said trustees, to the president and directors of the said bank; the said interest to be forever applied to the use of said seminary: *Provided*, That the amount vested as aforesaid, as part of the capital of said bank, shall not exceed one hundred thousand dollars.

Amount invested not to exceed 100,000 dolls.

Three per cent. fund to form part of capital.

§ 3. All the moneys which may arise from the three per cent. granted to this state, by the congress of the United States, on the net proceeds of lands which have been, or shall be sold by the United States, within this state, from and after the first day of September, 1819, shall constitute a part of the capital of said bank, and shall be so vested, as the same may be received by this state; and the net proceeds, or banking dividends of said capital, shall be applied to the making of roads and canals, and improving the navigation of the rivers within this state, or be vested so as to augment the capital, until such application shall be directed by law.

Seat of government fund to form part of capital.

§ 4. All the moneys which may arise, or have arisen, from the grant of the United States to this state, of sixteen hundred and twenty acres, for the seat of government thereof, shall form a part of the capital of said bank; and the net proceeds or banking dividends of said capital, be applied to objects connected with the seat of government, or be vested, so as to augment said capital, until such application may be directed by law.

Proceeds of lease of salt springs.

§ 5. All the moneys which may arise from the lease of the salt-springs, granted to this state by the United States, shall form a part of the capital of said bank, and the proceeds shall be vested, so as to continually increase the capital, until otherwise provided for by law.

Proceeds of escheats.

§ 6. All the moneys which may arise from escheats in this state shall form a part of the capital of said bank, and shall be so vested, whenever sums amounting to one hundred dollars, shall have accumulated in the treasury; but no investment shall be required to be made of a less sum than one hundred dollars, and the proceeds of the same shall be continually vested so as to augment the capital, until otherwise directed by law.

All other public funds may be invested.

§ 7. All other public funds, which the state may hereafter become possessed of, shall form a part of the capital of said bank, should the investment thereof be authorized by law.

Governor and commissioners authorised to issue state stock.

Amount, interest, and when redeemable.

Public funds and credit of the state pledged for its redemption.

§ 8. The governor, and five commissioners, to be appointed by a joint vote of both houses of the general assemby, shall be authorized to issue state stock, redeemable after a term of years, not exceeding ten years, or at the pleasure of the state, to an amount not exceeding one hundred thousand dollars, bearing an interest not exceeding six per cent. per annum, payable half yearly, at the treasury of this state, or at such place as the governor, and the said commissioners, may contract for in the issue of the said stock: the said stock, when so issued, to be in aid of the capital of the said bank; and all the moneys which may at any time be in the treasury, are hereby pledged for the regular payment of said interest, in time and manner as aforesaid, and the public funds of the state, of every nature and kind whatsoever, (the university fund, and three per cent. fund excepted,) are hereby pledged to secure the principal of said stock, and also, the good faith and credit of the state, in any case of deficiency of the said public funds.

§ 9. The following powers, rules, conditions, limitations, and restrictions shall be fundamental laws of the said bank, viz:

Power of president and directors.

1*st*. The president and directors for the time being, shall have power to elect and remove the cashier; and they shall also have power to appoint such officers, clerks, and servants under them, as shall be necessary for executing the business of the said corporation.

Shall receive money on deposit.

May deal in bills and notes.

2*d*. They shall receive money on deposit, and pay away the same to order, free of expense; deal in bills of exchange, and discount notes made payable and negotiable at said bank, with two or more good names thereon, or secured by a deposit of bank or other public stock, at not more than two-thirds of its value, at a rate of interest

Discounts not to exceed 2,000 dolls.

not exceeding six per cent. per annum. No individual, partnership, or body corporate, (the trustees of the university of Alabama in their official capacity excepted,) shall be indebted, either directly or indirectly, by discount as aforesaid, to the bank, in a greater amount than two thousand dollars.

Debts not to exceed twice the amount of capital.

3*d*. The total amount of the debts, which said corporation shall at any time owe, whether by bond, note, bill, or contract, shall not exceed twice the amount of its capital, over and above the moneys then actually deposited in bank for safe-keeping, unless the contracting of any greater debt shall have been previously authorized by a law of this state.

Directors to be individually liable for debts illegally contracted.

4*th*. In case of excess, the directors under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such case, be brought against them, or any of them, their or any of their heirs, executors, or administrators, in any court of this state having jurisdiction, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution, any condition, covenant, and agreement, to the contrary notwithstanding. But this shall not be construed to exempt said bank, or the lands, tenements, goods, or chattels of the same; and on their insufficiency, the state of Alabama, from being also liable for, and being chargeable with the said excess. Such of the said directors as may have been absent when said excess was contracted or created, or may have dissented from the resolution or act, by which the same was contracted or created, may respectively exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debt may be so contracted, and forthwith giving notice of the same to the comptroller of the state.

Directors, absent or dissenting, to be exonerated.

President and directors to be elected by general assembly.

5*th*. Immediately after the passing of this act, the legislature shall proceed to elect, by joint vote, a president and twelve directors to manage and conduct the business of the said bank, whose offices shall continue for one year, and until their successors shall be duly qualified, and all future elections of the president and directors shall be by joint vote of the general assembly.

Directors fill vacancy in their board,

6*th*. In case of vacancy occasioned by the death, resignation, or removal out of the state, of any director, a majority of the directors shall fill such vacancy, and the director so appointed shall hold his office during the unexpired term of service of the director so dying, resigning, or removing out of the state.

or in the office of president.

7*th*. In case of the death, resignation, or removal out of the state, of the president, (unless such removal be temporary, and by permission of the board of directors,) the directors shall appoint one of their own body a president, who shall serve until the next session of the legislature, when such vacancy shall be filled by joint vote of both houses of the general assembly.

Certain persons disqualified from being officers of the bank.

8*th*. No person who is not a citizen of this state, or who is a director of any other bank, or copartner of any such director, shall be eligible as president or director of this bank: nor shall any person who is a member of the general assembly of this state, be eligible to any office in said bank, or any branch thereof, during the time for which he is elected.

Not less than five directors to constitute a board.

9*th*. Not less than five directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary absence, in which case his place may be supplied by any other director whom he, by writing under his hand, shall nominate for the purpose, and in default of such nomination by the president, or in the case of the sickness or necessary absence of the person so appointed, in either event, the board of directors may appoint a temporary president.

Books to be kept and proceedings entered.

10*th*. The directors shall keep fair and regular entries of their proceedings, in a well bound book, to be provided for that purpose; and on any question, where two directors shall require it, the *yeas* and *nays* of the directors shall be duly inserted on the minutes, and those minutes shall be at all times, on demand, produced to the legislature, or any committee thereof, who may be legally authorized to require the same; and on all such questions, every member present shall be required to vote.

President, cashier, teller, and clerk to give security.

11*th*. Every president and cashier, before he enters on the execution of his duty, shall give bond with two or more securities, to the satisfaction of the directors, in a sum not less than fifty thousand dollars, conditioned for his good behaviour; and the tellers and clerk shall give security in a sum not less than ten thousand, nor more than twenty thousand dollars.

All officers, &c. to take oath.

12*th*. The president, directors, cashier, and all other officers and servants shall take the following oath on entering on the duties of their respective offices:—"I, A. B. do solemnly swear that I will faithfully discharge the trust reposed in me as   of the Bank of the State of Alabama. So help me God."

Bank incorporated. Style of the corporation.

13*th*. This bank is hereby incorporated, and made a corporation and body politic, by the name and style of *The President and Directors of the Bank of the State of Alabama*, and so shall continue until the first day of January, one thousand eight hundred and forty-five; and by that name shall be, and is hereby made, able and capable in law to sue and be sued, plead, and be impleaded, answer, and be answered, defend, and be defended in courts of record, or any other place whatsoever; and also to make, have, and use a common seal, and the same to break, alter, and renew, at their pleasure; and also to ordain, establish, and put in execution, such by-laws, ordinances, and regulations, as shall seem necessary and convenient for the government of the said corporation, not being contrary to the laws, or to the constitution of this state, and generally to do and execute all and singular, such acts, matters, and things, which to them it shall or may appertain to do: subject, nevertheless, to the rules, regulations, restrictions, limitations, and provisions, prescribed in this act.

Powers.

Empowered to issue notes.

14*th*. The president and directors shall have power to issue notes, signed by the president, and countersigned by the cashier, not under the denomination of one dollar, on the behalf of said corporation, for such sums, and with such devices, as they may deem most expedient and safe.

General grant of powers.

15*th*. They shall also be capable of exercising such other powers and authorities, as may be necessary for the well-governing and ordering the affairs of the said corporation, and of promoting its interests and its credit.

Bills under seal assignable by endorsement.

§ 10. The bills obligatory, and of credit, under the seal of said corporation, which shall be made to any person or persons, shall be assignable by endorsement thereupon, under the hand or hands of such person or persons, and of his, her, or their assignee or assignees, and so as absolutely to transfer and vest the property thereof, in each and every assignee or assignees, successively; and to enable such assignee or assignees, to bring and maintain an action thereupon, in his, her, or their own name, or names.

Other notes and bills assignable as the notes

And bills or notes which may be issued by order of the said corporation, signed by the president and countersigned by the cashier thereof, promising the payment of money to any person or persons, his, her, or and bills of private persons.

their order, or to bearer, though not under seal of the said corporation, shall be binding and obligatory upon the same in like manner, and with the like force and effect, as upon any private person or persons, if issued by him, her, or them, in his, her, or their private or natural capacity or capacities, and shall be assignable and negotiable in like manner as if they were so issued by such private person or persons; that is to say, those which are or shall be payable to any person or persons, his, her or their order, shall be assignable by endorsement, in like manner and with the like effect as foreign bills of exchange now are; and those which are or shall be payable to bearer, shall be negotiable, and assignable by delivery only: *Provided*, That all bills or notes issued by said bank, shall be payable on demand in specie, at the principal bank.

No director, &c. to loan out money at an illegal rate of interest.

§ 11. No director, officer, clerk, or servant of the said corporation, shall be concerned, either directly or indirectly, in the practice of advancing or loaning out moneys, at an illegal rate of interest, whether the same be done or effected under the form and color of a purchase or exchange of notes, acceptances, due-bills, checks on banks, acknowledgments, or in any other way or manner whatsoever; and every such director, officer, clerk, or servant of this bank, who shall be concerned as aforesaid, in any such practices, shall, in addition to the usual penalties imposed by law, forfeit and pay for each offence, the sum of two thousand dollars, to be recovered by action of debt in any court of record in this state, one-half to the use of the informer, and the other half to the use of the state; and to be levied of the goods and chattels, and houses, lands, tenements, and other hereditaments and real estates of the person or persons so offending, if any he or they shall have.

Penalty.

How recovered and levied.

Unable to discharge penalty, to be imprisoned six months at least.

And on failure of any property to answer the said penalty, by a return of *nulla bona*, the person or persons so offending, shall and may be taken on execution upon a *capias ad satisfaciendum*, and being so taken, shall not be entitled to the benefit of any act made for the relief of insolvent debtors, until he or they shall have remained, and been confined in prison for the term of six months at least. And any such person being convicted by the verdict of a jury, of any of the practices aforesaid, whether he be a director, or officer, or servant of this bank, shall on motion of any director, be dismissed from the service of said bank.

General assembly to be furnished with statements of the bank's transactions and situation.

§ 12. It shall be the duty of the president and directors to furnish to the general assembly within the first week of every session, statements of the amount of capital stock of said corporation, and of the debts due to the same; of the moneys deposited therein; of the notes in circulation, and of the cash on hand, together with all other property of said bank, both real and personal. And the general assembly shall have a right to inspect such general accounts in the books of the bank, as shall relate to the said statement; and shall, whenever it may be deemed necessary, appoint a joint committee of both houses of the general assembly for that purpose, with full powers to send for persons and papers.

Comptroller to inspect books, and report to the legislature.

And it shall also be the duty of the comptroller to inspect such general account in the books of the bank as often as he may please; and it shall, and it is hereby declared to be his duty, faithfully to report all and every violation of the fundamental rules of this corporation to the legislature: *Provided however*, That nothing in this clause shall imply a right of inspecting the account of any private individual or individuals, or any body politic or corporate, with the bank.

Notes receivable for all public dues.

§ 13. The bills or notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the treasury of this state, and by all tax-collectors and other public officers, in all payments for taxes or other moneys due to the state.

Comptroller to make certain transfers.

§ 14. The comptroller is hereby authorized and directed to transfer to the bank on account of capital, all sums which may be received in the course of the preceding years, on the first day of January, eighteen hundred and twenty-five, and remaining in the treasury on the first day of March in each and every year.

Board may suspend or expel a director.

§ 15. A majority of the members present, at any regular meeting of the directors of the Bank of the State of Alabama, may suspend any director with a view to his expulsion; and any member may be expelled at a meeting of a board of directors specially convened by the president for that purpose, as soon after such suspension takes place, as may be practicable; but such expulsion shall not be made by a majority of less than two-thirds of the whole number of directors.

Comptroller to be furnished with statement of the condition of the bank.

§ 16. The comptroller shall be furnished, as often as he may require, not exceeding once a month, with statements of the amount of the capital stock of the bank, and of the debts due to the same; of the moneys deposited therein; of the notes in circulation; and of the cash on hand; and he shall, under the injunction of secrecy, have the right to inspect all the accounts and books of the bank: *Provided*, That this act shall not be construed to imply a right of inspecting the accounts of any private individual or individuals with the bank. And it shall be the duty of the said comptroller to make an annual report to the legislature on the subject of the bank; and if in his opinion the transactions of the bank, or any particular circumstance relating thereto shall require it, he shall apply to the house for a select committee of three members to be appointed, who shall, under a like injunction of secrecy, take into consideration any matters relating to the said bank, submitted to them by the comptroller, and report thereon, at their discretion, to the legislature.

To make annual report to the legislature.

Comptroller not to hold any office.

§ 17. The comptroller for the time being shall not be a director, nor hold any office of trust or profit in or under any bank whatever.

Mode of collecting for and against the bank.

§ 18. If any person or persons shall be indebted to said corporation as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said bank, and shall delay payment thereof, it shall be lawful for the president of the bank, after having given thirty days notice thereof, to move the circuit[1] court of the county where said bank may be established, on producing to said court before whom the motion is made, the certificate of the president of the bank, that the debt is really and bona fide the property of the said bank, for judgment:—and all debts due by the said bank, by bond, bill, note, or otherwise, to any individual or body corporate, may be sued for and recovered in like manner.

Embezzlement by officers of the bank, how punished.

§ 19. If any president, director, cashier, or other officer of the state bank or any of its branches, shall embezzle or fraudulently convert to his or their own use, any sum of money, bank note, bill of exchange, check, bond, or other security placed under his care or management, by virtue of his office or place aforesaid, the person so offending, his aiders, abettors, and counsellors, upon conviction thereof, shall be judged guilty of felony, and be sentenced to imprisonment in the public jail of the county in which the offence has been committed, for a term not less than twelve months, and there remain until he or they shall make good all damages which the bank may have sustained by his or their misconduct, and be fined at the discretion of the jury trying the said offence; and shall forever thereafter be disqualified from holding any office of profit or trust in this state, and shall moreover be liable for the sum so embezzled.

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[1] An act passed in 1824 (see § 26) extends the same jurisdiction to the county court.—This and the section referred to, are virtually included in the 1st section of the act of 1828, inserted under the subdivision, "*Collection of Bank Debts,*" and the 6th article of the constitution, (Establishment of Banks, § 4,) which provides that "the remedy for collecting debts shall be reciprocal for and against the bank."—They are retained, however, in order to avoid misconstruction and uncertainty.

Ib. Sec. 22. In what the bank shall not deal.

§ 20. The said bank shall not deal in articles of goods, wares, or merchandise in any manner whatever, unless it be to secure a debt due said bank, incurred by the regular transactions of the same, as is provided for in this act.

Ib. Sec. 23. Bank to be located.

§ 21. The principal bank established by this act, shall be located by joint vote of both houses of the general assembly; and it shall require a majority of the whole number of votes given to make such location.

Ib. Sec. 24. Bank officers not to endorse.

§ 22. It shall not be lawful for the president, directors, cashier, or other officers of said bank, to become endorsers at said bank for each other, or any other person or persons.

1823—(22) *Sec.* 1. Supplemental.

[a] *Preceding act. See* § 8.

Governor, and three commissioners a quorum.

§ 23. The powers granted to the governor, and five commissioners, by the eighth section of the above recited act,[a] are hereby authorized and directed to be performed by a majority of them; and the governor and three of the above named commissioners shall constitute a quorum to transact any business contemplated by said act.

1824—(22) *Sec.* 1. Post notes, may issue payable, after a period of not more than 120 days.

§ 24. The president and directors of the Bank of the State of Alabama, when they find it expedient to issue notes not under the seal of the corporation, and promising the payment of money to any person or persons, his, her, or their order, assignable by endorsement, as provided in the tenth section of the act to establish the Bank of the State of Alabama, commonly called *post-notes*, may issue the said notes payable after a period not exceeding one hundred and twenty days, and the said notes shall be payable in specie on demand, when the period for which they shall have issued may have expired; any requisition or construction of the said tenth section to the contrary notwithstanding.

Ib. Sec. 2. Powers of attorney may be acknowledged before clerks of court, and notaries.

§ 25. The clerks of the several circuit and county courts, and public notaries, are hereby authorized and required, upon the application of any person or persons, to take acknowledgments of powers of attorney to transact business with the said bank, and certify the same under their seals of office; and if there be no seal of office, under their private seal, as their official seal.

Ib. Sec. 3. In debts, county court to have concurrent jurisdiction with circuit court.

[b] *First act under this title. See* § 18.

§ 26. The county court of the county where the said bank may be established, shall have concurrent jurisdiction with the circuit court of said county, for the recovery of debts for and against the bank, in the manner prescribed in the eighteenth section of the above recited act.[b]

Ib. Sec. 4. State treasurer to pay the revenue; &c. into bank.

§ 27. The treasurer is hereby required to pay over to the said bank the revenue and public dues audited in the comptroller's office, and the same shall remain subject in said bank to the checks of the said treasurer for the payment of all demands made payable at the treasury of this state.

Ib. Sec. 5. Vacancies occurring while legislature is in session.

§ 28. All vacancies that may happen in the board of directors, during the session of the general assembly, shall be filled by joint vote as in other cases.

1824—(23) *Sec.* 1. President and directors

§ 29. The president and directors of the Bank of the State of Alabama are required to take early and effectual measures to provide for the payment of the half-yearly interest which will first become due on the loan obtained for the use of the state: the said payment to be made at the Phœnix Bank in the city of New York; and also to provide from time to time for every future payment of interest on the said loan.

to provide for payment of the interest of loan to this state.

§ 30. It shall be the duty of the said president and directors, to reserve continually from the net proceeds of their banking business, full and sufficient sums to meet the said half-yearly payments of interest as they severally become due, and transmit the same to the Phœnix Bank in the city of New York.

Ib. Sec. 3. And to make semi-annual reservations hereafter.

§ 31. It shall be the duty of the senate and house of representatives, at every session, each and separately, to elect a joint committee, consisting of three members from each house, who shall, under the injunction of secrecy, be invested with full powers to make a thorough examination of all the books and papers, of what nature or kind soever they may be, belonging to the said bank; of the specie and notes on hand; of the notes discounted; the applications for discount:—and the said committee shall, in addition, be further invested with all the powers which the twelfth section of "An act to establish the Bank of the State of Alabama"[a] may now confer on the joint committee of both houses of the general assembly.

1826—(2) *Sec.* 1. Joint committee to be elected by general assembly.

[a] *The first act under this title. See* § 12.

§ 32. It shall be the duty of the said committee to report to the general assembly the amount of specie and notes on hand; the amount of notes discounted, and each and every case, (if any there be,) of a violation of the charter, of mismanagement of the concerns of said bank, or of fraud or imposition practised by borrowers or others, on the directors or officers of the institution;[b] for which purposes, or for any other object connected with the interest and well-being of the institution, said committee may at their discretion send for persons and papers, and compel the attendance of witnesses: *Provided however*, That nothing herein contained shall imply the right of said committee to report to the general assembly the situation of any private debtor or creditor of the bank, or the name of any private debtor or creditor, unless their situation or names are palpably connected with some imputed violation of the charter, mismanagement in the concerns of the bank, or of some fraud or imposition practised on the directors or officers of the institution.

Ib. Sec. 2. Duty of committee.

[b 1828—(15) *Sec.* 4.] May send for persons and papers. Proviso.

§ 33. The injunction of secrecy imposed on the committee as aforesaid, shall not be removed, except by a joint resolution of both houses of the general assembly.

Ib. Sec. 3. Injunction of secrecy on committee.

§ 34. The compensation to be allowed to the cashier and other officers and servants of the Bank of the State of Alabama, shall be fixed by the general assembly: *Provided*, That no allowance shall be made by the directors to the cashier, clerk, or teller, unless the cashier be required to live in or adjoining the banking-house, in which event rent may be allowed him by the board, according to their discretion.

1827—(8) *Sec.* 2. General assembly to fix compensation of bank officers.

§ 35. All monies which have arisen, or which may arise from the profits of the bank, shall be vested by the president and directors, under the direction of the governor, in bank stock in the said bank, until otherwise directed by law.

1827—(22) *Sec.* 2. Profits of the bank to be vested in stock.

§ 36. The directors of the bank of the state, shall be exempted from serving as jurors and performing militia duty.

1827—(18) *Sec.* 1. Directors exempt from certain duties.

§ 37. The governor, comptroller, and treasurer of the state, and the president of the Bank of the State of Alabama, are hereby authorized and required to issue certificates of stock of the state of Alabama, to an amount not exceeding one hundred thousand dollars, to bear interest at the rate of six per centum per annum, payable semi-annually at the Bank of the State of Alabama, or at such other place as may be

1828—(8) *Sec.* 1. Governor, comptroller, treasurer, and president of bank, to issue certificates of stock not exceeding 100,000 dolls. in aid of the bank's capital.

agreed on, redeemable at the expiration of twenty years, or at any time thereafter that the state may choose, and sell said stock for cash, provided the same can be disposed of at par, and the sum so to be realized shall be added to the capital stock of the said Bank of the State of Alabama.

Ib. Sec. 2.
Funds and faith of the state pledged for its redemption.

§ 38. To secure the regular and punctual payment of the interest semi-annually, and the ultimate redemption of said stock, all the revenue of the state (except the university fund and three per cent. fund) is hereby pledged, and in case of any deficiency, the faith of the state is hereby solemnly pledged to provide such additional means as may be necessary.

1828—(15) *Sec.* 2.
Bank not to purchase real estate, unless to secure debts.

§ 39. It shall not be lawful for the president and directors of said bank, or any other person or persons for them, to purchase any real estate, or in any wise be concerned therein, for the use of said bank, unless the same be purchased for the purpose of securing debts *bona fide* due to said bank, any law to the contrary notwithstanding.

Ib. Sec. 3.
Not to discount for a larger amount than 5,000 dolls.

Bill to have two endorsers.

§ 40. It shall not be lawful for the president and directors of said bank to purchase or discount any draft or bill of exchange for a larger amount than five thousand dollars; and on every draft or bill of exchange purchased or discounted by the said bank, there shall be at least two responsible endorsers, each of whom shall be considered good for the amount of such draft or bill: *Provided always*, That no individual shall at any time be indebted to the bank as endorser on any draft or bill of exchange, for a larger amount than five thousand dollars.

1829—(11) *Sec.* 1.
Additional clerk may be employed for six months in a year.

§ 41. The president and directors of the Bank of the State of Alabama, shall have power to employ an additional clerk for said bank, for not exceeding six months each year, and pay him such compensation as a majority of the board may agree upon, not exceeding sixty dollars per month.

1832—(26) *Sec.* 16.
President and directors of the bank of the state to appoint committee to examine branch banks.
Committee's duty.

§ 42. It shall be the duty of the president and directors of the Bank of the State of Alabama, to appoint, annually, a committee or committees of not less than two of their board, whose duty it shall be to visit the several branches of said bank, annually, in the month of October, and at such other times as they deem proper, and make a thorough and minute investigation of the affairs, transactions, and condition of said branches; and the said committees are hereby invested with all the powers with respect to said branches, which the joint committees of the general assembly to examine the condition of the state bank, have in reference to it; it shall be the duty of said committees to make full reports of their several examinations to the president and directors of the Bank of the State of Alabama, who shall report the same to the general assembly of this state, within the first week of each annual session.

Ib. Sec. 17.
Compensation of committee.

§ 43. Each member of the committees contemplated by the foregoing section, shall receive four dollars for every thirty miles in travelling to and from said branch banks, and four dollars for every day that they may be engaged in the examination of said branches.

1833—(5) *Sec.* 2.
Members of general assembly not to be security in the bank of the state, or any of its branches.

§ 44. No member of the general assembly shall become security for each other, or for any other person, upon any note to be offered at the Bank of the State of Alabama, or any of its branches.[1]

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[1] The act of January 14, 1826, which is evidently the one intended to be repealed by the first section of the above act, although recited as passed in 1825, prohibited members of the general assembly from being indebted to the Bank of the State of Alabama, *either directly or indirectly*. An act passed in 1827, provides "that this act (*substantially that of January* 14, 1826) shall not be so construed as to prevent any member of the general assembly from negotiating any bill of exchange at said bank, either as drawer, acceptor, or endorser."

§ 45. It shall be the duty of the governor to appoint three commissioners for the examination of each of the branches of the Bank of the State of Alabama, whose duty it shall be within two months immediately preceding the annual meeting of the general assembly, to proceed to the branch bank for which they may be appointed, and there to examine all books, papers, and accounts, in said bank or branches, that said committee may deem proper and material for the better understanding of the condition of said bank, or branches; also, all cash on hand.

1833—(36) Sec. 1. Governor to appoint commissioners to examine.

Their duty.

§ 46. If, on the examination of said bank or branches, said commissioners shall find that any officer of said bank has been guilty of fraud or great negligence in his duty as such, they shall report the same to the board of directors of said bank or branch, as the case may be; and if said commissioners think the case requires it, they may recommend his removal from office; and the board of directors, shall take the case under consideration, and in every vote upon a question of removal from office, the board shall vote by yeas and nays, and shall enter their proceedings on their journals; and the said commissioners shall have power, and it is hereby made their duty, to examine the record of the proceedings of the board of directors of said banks, and if they believe there has been any impropriety of conduct on the part of the directors, either by too great an emission of money, gross partiality, or from any other cause, it shall be their duty to remonstrate in writing with said board of directors, and to transmit a copy of said remonstrance to the legislature at its next session.

Ib. Sec. 2. Further specifications of their duties.

§ 47. If, in the opinion of said commissioners, any officer of said bank or branches shall have been guilty of fraud or gross impropriety, and the board of directors of said bank or branch, shall not on application remove said officer, said commissioners shall, by unanimous vote, have power to suspend such officer from office, until the next session of the general assembly; at which time the whole of their proceedings shall be reported within the first week of the session.

Ib. Sec. 3. Officers guilty of fraud, &c. liable to be removed.

§ 48. It shall be the duty of the president and directors, and all officers of said bank, or branches, to furnish said commissioners, when examining the bank or branch of which they may be officers, any information; and they shall be, moreover, bound to answer any interrogatory, put to them by said commissioners, which may be material to the subject of their investigation.

Ib. Sec. 4. Duty of president and directors in regard to examining banks.

§ 49. Said commissioners may select their own time for the examination of the bank or any of its branches, and shall report to the legislature any violation of their respective charters, and shall receive for their services five dollars for each day they may be engaged in such examination, and four dollars for every thirty miles going to and returning from the same to their respective places of residence, to be paid on the certificate of the president of said bank and branches so examined, stating the time served by each commissioner, respectively.

Ib. Sec. 5. Commissioners to report to Legislature.

Their compensation.

§ 50. Said commissioners shall, each of them, before they enter upon the duties hereinbefore assigned them, take and subscribe an oath, faithfully to perform the duties required of them by law.

Ib. Sec 6. Commissioners' oath.

NOTE.—For the compensation of bank officers, see "Salaries."

COLLECTION OF BANK DEBTS.

§ 51. If any person or persons shall be indebted or otherwise liable to the Bank of the State of Alabama, by bill, draft, or any other instrument for the payment of money, as drawer, acceptor, or endorser,

1828—(17) Sec. 1. Bank debts may be collected on motion.

and shall delay payment thereof, it shall be lawful for the president of the bank, after having given thirty days notice to the person or persons so indebted, to move the circuit or county court of the county where said bank is established, on producing to said court before whom the motion is made, the certificate of the president of the bank, that the debt is really *bona fide* the property of the said bank, for judgment.

Ib. Sec. 2. Notarial protest evidence of the facts it certifies.

§ 52. The protest of a notary public of an inland bill of exchange, or other protestable security, the property of said bank, setting forth a demand, refusal, non-acceptance, or non-payment, and that notice thereof was given either personally or otherwise, to the parties entitled thereto, shall be evidence of such facts: *Provided*, That nothing herein contained shall be construed to affect the reasonableness or sufficiency of such demand, refusal, non-acceptance, or non-payment.

Ib. Sec. 3. Mode of holding bank debtors to bail.

§ 53. Whenever the president and directors of said bank may be desirous to hold to bail any debtor thereof, it shall be lawful for said president and directors, or either of them, to sue out of the circuit or county court of the county where said bank is located, a writ of *capias ad respondendum* against such debtor, and endorse thereon the cause of action, and that *bail is required.* In compliance with which direction, the sheriff or other officer executing said writ, shall take a bail-bond, with the condition provided by law, which bail-bond shall be assignable, and sued on as bail-bonds in other cases. And the said bank, upon the production of said writ and endorsement, and the return of the sheriff or other officer, that the same is executed, together with the certificate of the president that the debt sued on is *bona fide* the property of said bank, shall recover a judgment therefor, at the return term of said writ: *Provided*, That no person shall be held to bail, unless the president, agent, or attorney of the bank will make affidavit to the amount of the debt due the same, and that bail is not required for the purpose or vexing or harassing the defendant.

Ib. Sec. 4. Notice to principal.

§ 54. A notice left at the usual place of residence of the principal, in each case, shall be good and sufficient notice in all cases as to such principal, to entitle said bank to recover judgment against such principal.

BRANCHES.

1832—(29) *Sec.* 6. Branches of state bank to provide funds for the payment of interest for their respective stock.

§ 1. The several branches of the Bank of the State of Alabama, shall provide funds for the payment of the interest on the five per cent. stock, of which their respective capitals are composed, and shall pay over the same to the order of the president of the Bank of the State of Alabama, semi-annually.

BRANCH AT MONTGOMERY.

1832—(14) Branch established.

§ 1. *Be it enacted*, &c. That a branch of the Bank of the State of Alabama, be, and the same is hereby established, at such place as shall be determined upon by joint vote of both houses of the general assembly,[1] at the present session, to be known and styled "The Branch of the Bank of the State of Alabama."

Style.

Principal bank to supply it with a capital of 300,000 dolls.

§ 2. The president and directors of the Bank of the State of Alabama, are hereby required, in behalf of the state, in eight months after the passage of this act, to supply the branch bank hereby established, with three hundred thousand dollars, to be set apart and applied to said branch bank: *Provided*, The same can be obtained by loan not exceeding five per centum per annum; and no part of the present capital stock of the Bank of the State of Alabama, shall be furnished said branch bank.

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[1] Fixed at Montgomery by joint vote, January 21, 1832.—See journals of the general assembly for 1831—2.

Legislature to elect president and directors.

§ 3. For the management of the concerns of said branch bank, the legislature shall proceed to elect, by joint vote of both houses, a president and twelve directors, whose office shall continue for one year, and until their successors shall be duly qualified; and all subsequent elections for president and directors, shall be by joint vote of both houses of the general assembly.

Powers, rules, &c.

§ 4. The following powers, rules, conditions, limitations, and restrictions, shall be the fundamental laws of said branch bank, viz: 1st. The president and directors, for the time being, shall have power to elect and remove the cashier, and such other officers, and clerks under them, as shall be necessary to execute the business of said branch bank, and allow them such compensation for their services, as shall be fixed by law. 2d. They shall receive money on deposit, and pay out the same to order, free of expense; deal in bills of exchange, and discount notes, made payable and negotiable at said branch bank, with two or more good and sufficient securities thereon, at a rate of interest not exceeding six per cent. per annum: no individual, partnership, or body corporate, (the trustees of the university of the state of Alabama, in their corporate capacity excepted,) shall be indebted, either directly or indirectly, by discount of any note or notes, in a greater amount than two thousand dollars. 3d. In case of vacancy, by death, resignation, or removal out of the state, of any director, a majority of the directors shall fill such vacancy, and the directors so appointed, shall hold his or their offices during the unexpired time of the director or directors, dying, resigning, or removing out of the state. 4th. In case of death, resignation, or removal out of the state, of the president, unless such removal be temporary, and he has permission of the board of directors, the directors shall appoint one of their own body president, who shall serve until his successor shall be elected by the next general assembly; no person, who is not a citizen of this state, or who is a director of any other bank, or a copartner of any such director, shall be eligible as president or director of said branch bank. 5th. Not less than five directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness, or necessary absence, in which event the board may appoint, for the time being, a president *pro tem.* 6th. The directors shall keep fair and regular entries of all their proceedings, in a well-bound book to be provided for that purpose; and upon all questions, when one director may require it, the *yeas* and *nays* shall be duly recorded on the minutes, and those minutes shall at all times, on demand, be produced to the legislature, or any committee thereof, who may be duly authorized to require the same; and on all such questions, every member present shall be required to vote. 7th. The president, directors, cashier, and officers and servants, shall take and subscribe the following oath, before entering on the discharge of the duties of their respective offices, to wit: "I, do solemnly swear (or affirm, as the case may be,) that I will faithfully and correctly, to the best of my skill and ability, discharge the trust reposed in me as ———— of the branch bank of the state of Alabama, so long as I may continue to discharge the duties of said office. So help me God."

Discounts limited.

Vacancy in board of directors.

In office of president.

Who disqualified.

Not less than five to be a quorum.

Directors to keep regular entries of their proceedings.

Official oath of president, &c.

Duration of charter, and powers of president and directors.

§ 5. The branch of the Bank of the State of Alabama, hereby established, shall continue until the first day of January, one thousand eight hundred and forty-five, and the president and directors shall have power to ordain, establish, and put into execution, such by-laws, ordinances, and regulations, as shall seem necessary and convenient for the good government of the same, not contrary to the laws and constitution of the state; and generally to do and execute all and singular such acts, matters, and things as to them shall or may seem necessary to be done, subject however, to the rules, restrictions, limitations, and provisions prescribed in this act: *Provided*, That they shall not be authorized to expend more than five thousand dollars, for a banking house.

Proviso.

Its notes, how issued and where payable.

§ 6. The president and directors of the branch bank hereby established, shall have power to issue notes, signed by the president, and countersigned by the cashier, not under the denomination of one dollar: *Provided*, All bills or notes issued by said branch bank, shall be made payable in specie, at the counter of said bank.

President and directors to report to the bank of the state.

§ 7. It shall be the duty of the president and directors of the said branch bank, to furnish the president and directors of the Bank of the State of Alabama, at least once every three months, if required by said bank, statements showing the amount of notes discounted, the amount of specie and bank notes on hand, the debts due to and from the same, and the amount of moneys deposited therein; and the president and directors of the Bank of the State of Alabama, or a committee of the same appointed for that purpose, shall have a right to inspect the books of said branch bank whenever they may deem it necessary; and they shall faithfully report every violation of the fundamental rules of said branch bank, to the general assembly.

Punishment of officers, &c. for embezzlement.

§ 8. If any director, cashier, or other officer, or agent of said branch bank, shall embezzle, or fraudulently convert to his or their own use, any sum of money, bank notes, bill of exchange, check, bond, or other security, placed under his or their care and management, by virtue of his or their trust or place aforesaid, the person or persons so offending, his or their abettor or counsellor, upon conviction thereof, shall be judged guilty of felony, and sentenced to imprisonment in the jail of the county in which the offence may have been committed, for a term not less than twelve months, and there remain until he or they shall make good all damages which the bank may have sustained by his or their misconduct, and be fined at the discretion of the jury trying said offence, and shall for ever thereafter be disqualified from holding any office of profit, trust, or emolument, in the state of Alabama.

May collect its debts by motion in the circuit court.

§ 9. If any person shall be indebted to said branch bank, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said branch bank, or on any bill of exchange purchased by said branch bank, payable at any place in or out of the state of Alabama, and shall delay payment thereof, it shall be lawful for the president thereof, after having given thirty days notice to the maker or endorser, as the case may be, to move the circuit court of the county in which said branch bank may be established, on producing to said court, before whom the motion is made, the certificate of the president thereof, that the debt is really and *bona fide* the property of the branch of the Bank of the State of Alabama, for judgment; and the court shall proceed to render judgment accordingly.

Citizens' privilege in borrowing.

§ 10. The citizens of this state shall be, and they are hereby authorized and at liberty to borrow money of the principal bank, or any branch or branches thereof, wherever they may choose to apply.

Who may not endorse.

§ 11. It shall not be lawful for the president, directors, cashier, or other officers of said branch bank, or any member of the general assembly, to become endorser for each other, or any other person or persons of said branch bank.

When to commence operations.

§ 12. It shall not be lawful for the president and directors of said branch bank, to commence operations, by discounting or issuing any notes or bills, until half of the capital stock of said branch bank shall be had in specie in its vaults.

Debts not to exceed twice the amount of capital.

In case of excess, directors individually liable.

Proviso.

§ 13. The total amount of the debts which said corporation shall at any time owe, whether by bond, note, bill, or contract, shall not exceed twice the amount of its capital, over and above the moneys then actually deposited in the bank for safe keeping, unless the contracting of any greater debt shall have been previously authorized by a law of this state; and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such case, be brought against them, or any of them, their, or any of their heirs, executors, or administrators, in any court of this state having jurisdiction, by any creditor of said corporation, and may be prosecuted to judgment and execution, any condition, covenant, and agreement to the contrary notwithstanding; but this shall not be construed to exempt said bank, or the lands, tenements, goods, or chattels of the same; and on their insuffiency, the state of Alabama, from being also liable for, and being chargeable with, the said excess. Such of the said directors as may have been absent when said excess was contracted or created, or who may have dissented from the resolution or act by which the same was contracted, or created, may respectively exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debt may be so contracted, and forthwith giving notice of the same to the comptroller of the state.

Credit of state pledged.

§ 14. The credit of the state of Alabama is hereby pledged for the ultimate redemption and payment of all notes issued, and all debts contracted, by said branch bank.

Remedy reciprocal.

§ 15. The remedy for collecting debts shall be reciprocal, for and against the said branch bank.

Capital to be raised by sale of state stock.

§ 16. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required, to issue certificates of state stock, to an amount not exceeding three hundred thousand dollars, to bear interest not exceeding five per centum per annum, payable semi-annually at the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of twenty years, or at any time thereafter that the state may choose, and sell said stock for cash, provided the same can be disposed of at par; and the sum to be realized shall be applied to, and shall compose the capital of the said branch of the Bank of the State of Alabama.

Revenue and faith of the state pledged for its redemption.

§ 17. To secure the regular and punctual payments of the interest semi-annually, and the ultimate redemption of said stock, all the revenue of the state, (except the university fund, the three per cent. fund, and the fund arising from the sale of the sixteenth sections,) is hereby pledged, and in case of a deficiency, the faith of the state is hereby solemnly pledged, to provide such additional means as may be necessary.

1832—(29) *Sec.* 1.

Governor and commissioners required to issue state stock.

§ 18. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required to issue certificates of state stock, to an amount not exceeding five hundred thousand dollars, to bear interest not exceeding five per centum per annum, payable semi-annually at the Bank of the the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter the state may choose; and said certificates of stock shall be drawn in sums of from one to ten thousand dollars each; and it shall be the duty of the treasurer of the state, to provide a suitable book and register said certificates therein, and shall then deliver the same to the president or any committee of said branch bank,[1] taking his or their receipts for the same; and it shall be the duty of the president and directors of said branch bank, to cause said certificates of stock to be sold for cash, at par, and for the highest premium they can command above their par value; and the sums thus realized, shall be applied to, and shall compose a part of the capital stock of said branch bank.

For what amount and term.

State treasurer's duty.

Sale of certificates.

Ib. Sec. 2. Revenue of the state pledged.

§ 19. To secure the regular and punctual payment of the interest, semi-annually, and the ultimate redemption of said stock, all the revenue of the state, except the university fund, the three per cent. fund, and fund arising from the sale of sixteenth sections, is hereby pledged, and in case of deficiency, the faith of the state is hereby solemnly pledged to provide such additional means as may be necessary.

Ib. Sec. 3. Officers to give bond.

§ 20. Every president and cashier, before he enters on the execution of his duty, shall give bond, with two or more securities, in a sum not less than fifty thousand dollars, to the satisfaction of the directors, conditioned for his good behaviour, and the teller and clerks shall give security in a sum not less than ten nor more than twenty thousand dollars, which bond shall not be void upon any one or more recovery, conditioned as aforesaid.

Ib. Sec. 4. President and directors to furnish General Assembly with an exhibit of the condition of the bank. General assembly may inspect books of the bank.

§ 21. It shall be the duty of the president and directors to furnish to the general assembly, within the first week of every session, statements of the amount of the capital of said branch bank, and of the debts due to the same, of the moneys deposited therein, of the notes in circulation, and of the cash on hand, together with all other property of said branch bank, both real and personal; and the general assembly shall have a right to inspect such general accounts in the books of the branch bank, as shall relate to the said statements, and shall, when it may be deemed necessary, appoint a joint committee of both houses of the general assembly for that purpose, with full powers to send for persons and papers: *Provided*, That nothing in this clause shall imply a right of inspecting the deposits of any private individual or individuals, or any body politic or corporate, with the branch bank.

Ib. Sec. 5. Officers of the bank or members of general assembly not to endorse.

§ 22. It shall not be lawful for the president, directors, cashier, or other officers of said branch bank, or any member of the general assembly, to become security for each other, or any other person or persons, at said branch bank.

BRANCH AT DECATUR.

1832—(24) Branch bank established.

§ 1. *Be it enacted*, &c. That a branch Bank of the State of Alabama, is hereby established at such place as shall be selected in the Tennessee Valley,[2] by joint vote of both houses of the present general assembly, to be known and styled, "The Branch of the Bank of the State of Alabama, at ."

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[1] At Montgomery. See title of the act.

[2] Fixed at Decatur, by joint vote.—See the journals of the extra session of 1832.

§ 2. For the management of the concerns of said branch bank, the present legislature, by joint vote of both houses, shall proceed to elect a president and twelve directors, whose office shall continue one year, and until their successors shall be duly qualified; and all subsequent elections for president and directors, shall be by joint vote of both houses of the general assembly. President and directors to be elected.

§ 3. The powers, rules, limitations, and restrictions contained in the fourth section of an act, establishing a branch of the Bank of the State of Alabama, at Montgomery, shall be the fundamental laws of the branch bank hereby established: *Provided*, That hereafter, no person exercising the occupation of a public or private agent, to procure discounts, or agent for any other banking institution, in or out of this state, or the copartners of any such agent, or any person holding the office of bank attorney, or the partner of such attorney, shall be eligible to any other office of trust or profit, in the Bank of the State of Alabama, or any branch thereof: *Provided also*, That hereafter the president and directors, and all other officers of the Bank of the State of Alabama, and the branches thereof, before they enter on the duties of their respective offices, shall take the following oath, in addition to the other oaths prescribed by law: "I, solemly swear (or affirm, as the case may be,) that I will not, either directly or indirectly, violate the act entitled 'An act regulating the rate of interest,' while I continue in the office of , in the bank or branch of the Bank of the State of Alabama: So help me God." Its powers, rules, &c. Who not eligible to office in the state bank or its branches. Oath of bank officers.

§ 4. The branch of the bank hereby established, shall continue until the first day of January, one thousand eight hundred and forty-six; and the president and directors shall have power to ordain, establish, and put in execution, such by-laws, ordinances, and regulations, as shall seem necessary and convenient, for the good government of the same, not contrary to the laws and constitution of the state; and generally, to do and execute all and singular such acts, matters and things, as to them shall or may seem necessary to be done, subject, however, to the rules, restrictions, limitations, and provisions contained in this act: *Provided*, They shall not be authorized to expend more than seven thousand dollars for the purchase of a lot, and the erection of a banking-house. Duration of charter. Bye-Laws. Amount for banking-house and lot.

§ 5. The president and directors of the branch bank hereby established, shall have power to issue notes, signed by the president, and countersigned by the cashier, not under the denomination of one dollar: *Provided*, All bills or notes issued by said branch bank, shall be made payable in specie, at the counter of said bank. Power to issue notes. Proviso.

§ 6. It shall be the duty of the president and directors of said branch bank, to furnish the president and directors of the Bank of the State of Alabama, once every three months, and oftener if required, statements, showing the amount of notes discounted, the amount of notes and specie on hand, the debts due to and from the same, and the amount of money deposited therein; and the president and directors of the Bank of the State of Alabama, or a committee of the same, appointed for that purpose, shall have a right to inspect the books, funds, and property of said branch bank, whenever they may deem it necessary; and they shall faithfully report all and every violation of the fundamental rules of said branch bank, to the general assembly. Branch to furnish state bank with certain statements. Inspection of branch bank.

§ 7. If any director, cashier, or other officer, or agent of said bank, shall embezzle or fraudulently convert to his or their own use, any sum of money, bank notes, bills of exchange, check, bond, or other Penalty for embezzling money.

security, placed under his or their care and management, by virtue of his or their place of trust aforesaid, the person or persons so offending, his or their abettor or counsellor, upon conviction thereof, shall be judged guilty of felony, and sentenced to imprisonment, in the jail of the county, in which the offence may have been committed, for a term not less than twelve months, and there remain until he or they shall make good all damages, which the bank may have sustained by his or their misconduct; and shall forever thereafter, be disqualified from holding any office of profit or trust, in this state.

To collect its debts by motion.

§ 8. If any person shall be indebted to said branch bank, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said branch bank, or any bill of exchange purchased by said bank, payable at any place in or out of this state, and shall delay payment thereof, it shall be lawful for the president thereof, after having given thirty days notice to the maker or endorser, as the case may be, to move the circuit or county court, of the county in which said bank may be established, for judgment, upon producing to said court before which the motion shall be made, the certificate of the president thereof, that the debt is really and *bona fide*, the property of the said branch Bank of the State of Alabama; and either the circuit or county court of said county, shall proceed to render judgment accordingly.

When to discount.

§ 9. It shall not be lawful for the president and directors of said branch bank, to commence operations by issuing or discounting notes, until one half of the amount of money raised from the stock created by this act, shall be paid in gold or silver, and deposited in the vaults of the bank: *Provided*, That the said bank shall not commence operations, until two hundred thousand dollars of said stock shall have been sold.

Officers of the bank and members of the legislature not to be endorsers.

§ 10. It shall not be lawful for the president, directors, or cashier, or other officer of said branch bank, or any member of the general assembly, to become endorsers for each other, or any other person or persons in said branch bank.

Debts of the branch shall not exceed twice the amount of capital.

§ 11. The total amount of the debts, which the said corporation shall at any one time owe, whether by bond, note, bill, or contract, shall not exceed twice the amount of its capital, over and above the moneys there actually deposited for safekeeping, unless the contracting of any greater debt shall have been previously authorized by law; and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their private capacities; and an action of debt may in such case be brought against them, or any of them, their or any of their heirs, executors, or administrators, in any court of this state, having jurisdiction, by any creditor of said corporation; and may be prosecuted to judgment or execution, any condition, covenant, and agreement to the contrary notwithstanding: but this shall not be so construed as to exempt said bank, or the lands, tenements, goods, or chattels of the same, and in case of their insufficiency, the state of Alabama, from also being liable for, and being chargeable with the said excess: *Provided*, That such of the directors who may have been absent, when said excess may have been contracted or created, or who may have dissented from the resolution or the act, by which the same was contracted or created, may exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debts may be so contracted, and forthwith giving notice of the same to the comptroller of the state.

Directors liable.

Proviso.

Credit of the state pledged.

§ 12. The credit of the state of Alabama, is hereby pledged for the ultimate redemption of all notes issued, and all debts contracted by said branch bank.

§ 13. The remedy for the collection of debts, shall be reciprocal for and against the bank. Remedy for and against the bank to be reciprocal.

§ 14. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required, to issue certificates of state stock, to an amount not exceeding one million of dollars, to bear an interest, not exceeding five per centum per annum, payable semi-annually at the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter, the state may choose. And said certificates of stock shall be drawn in sums of from one to ten thousand dollars each; and it shall be the duty of the treasurer of the state, to provide a suitable book, and register said certificates therein; and shall then deliver the same to the president or any committee of directors of said branch bank, taking his or their receipts for the same. And it shall be the duty of the president and directors of said branch bank, to cause said certificates of stock to be sold for cash and at par, and for the highest premium they can command above par value; and the sums thus realized, shall be applied to, and shall compose the capital of said branch bank hereby established. Certificates of stock to be issued. To be registered. To be sold.

§ 15. To secure the regular and punctual payment of the interest semi-annually, and the ultimate redemption of said stock, all the revenue of the state, (except the university fund, the three per cent. fund, and fund arising from the sale of the sixteenth sections,) shall be, and the same is hereby pledged; and in case of deficiency, the faith of the state is hereby solemnly pledged to provide such additional means as may be necessary. Revenue of the state pledged for their payment.

BRANCH AT MOBILE.

§ 1. *Be it enacted, &c.* That a branch of the Bank of the State of Alabama, with a capital of two millions of dollars, is hereby established in the city of Mobile, to be styled the Branch of the Bank of the State of Alabama, at Mobile. 1832—(26) Capital stock.

§ 2. For the management of the concerns of said branch bank, the legislature shall annually proceed to elect by joint vote of both houses, a president and fourteen directors, whose office shall continue for one year, and until their successors shall be duly qualified; and all subsequent elections for president and directors, shall be by joint vote of both houses of the general assembly. Election of president and directors.

§ 3. The following powers, rules, conditions, limitations and restrictions, shall be the fundamental laws of said branch bank, viz: First, The president and directors for the time being, shall have power to elect and remove the cashier and such other officers and clerks under them as shall be necessary, to execute the business of said branch bank, and allow them such compensation for their services as shall be reasonable and just: Second, They shall receive money on deposit, and pay out the same to order free of expense; deal in bills of exchange and discount notes made payable and negotiable at said branch bank, at a rate of interest not exceeding six per cent. per annum; and all notes that have from six to nine months to run, may be discounted at a rate of interest not to exceed seven per cent. per annum; and all notes that have from nine to twelve months to run, may in like manner be discounted at a rate of interest not to exceed eight per cent. per annum: Third, In case of vacancy by death, resignation or removal Power of the president and directors. Cashier, &c. Deposit. Rate of interest.

10

Vacancies how filled.

Who not eligible as president or director.

Six directors to constitute a board.

Books to be kept and proceedings entered.

Oath of officers.

out of the state of any director, a majority of the directors shall fill such vacancy, and the director or directors so appointed, shall hold his or their office during the unexpired time of such director or directors: Fourth, In case of death, resignation, or removal out of the state of the president, unless such removal be temporary, and he has permission of the board of directors, the directors shall appoint one of their own body, president, who shall serve until his successor shall be elected by the next general assembly. No person who is not a citizen of this state, or who is a director of any other bank, or co-partner of any such director, shall be eligible as president or director of said bank: Fifth, Not less than six of the directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary absence, in which event the board may appoint for the time being, a president *pro tempore:* Sixth, The directors shall keep fair and regular entries of all their proceedings in a well-bound book to be provided for that purpose, and upon all questions, when one director may require it, the yeas and nays shall be duly recorded on the minutes; and those minutes shall at all times, on demand, be produced to the legislature, or any committee thereof, who may be duly authorized to require the same; and on all such questions, every member present shall be required to vote: Seventh, The president, directors, cashier, and officers and servants, shall take and subscribe the following oath, before entering on the discharge of the duties of their respective offices, to wit: "I solemnly swear (or affirm, as the case may be) that I will faithfully and correctly, to the best of my skill and ability, discharge the duties reposed in me as   of the branch of the Bank of the State of Alabama, at Mobile; and that while I am such, I will not violate the provisions of an act entitled 'An act to regulate the rate of interest,' passed December 17, 1819, so long as I continue to discharge the duties of said office: So help me God."

Officers to give bond.

§ 4. Every president and cashier, before he enters on the execution of his duty, shall give bond, with two or more securities, in a sum not less than fifty thousand dollars, to the satisfaction of the directors, conditioned for his good behavior; and the teller and clerks shall give security in a sum not less than ten nor more than twenty thousand dollars, which bond shall not be void upon any one or more recovery, conditioned as aforesaid.

Empowered to issue notes.

§ 5. The president and directors shall have power to issue notes signed by the president, and countersigned by the cashier, not under the denomination of one dollar, on the behalf of said branch bank, for such sums, and with such devices, as they may deem most expedient and safe; and they shall also be capable of exercising such other powers and authorities as may be necessary for the well governing and ordering the affairs of said branch bank, and of promoting its interest and its credit.

Legislature to be furnished with a statement of the transactions of the bank.

May inspect books of the bank.

§ 6. It shall be the duty of the president and directors, to furnish to the general assembly, within the first week of every session, statements of the amount of the capital of said branch bank, and of the debts due to the same; of the moneys deposited therein; of the notes in circulation, and of the cash on hand; together with all other property of said branch bank, both real and personal; and the general assembly shall have a right to inspect such general accounts in the books of the branch bank, as shall relate to the said statements; and shall, when it may be deemed necessary, appoint a joint committee of both houses of the general assembly for that purpose, with full powers to send for persons and papers: *Provided*, That nothing in this clause shall imply a right of inspecting the deposits of any private individual or individuals, or any body politic or corporate with the branch bank.

Mode of collecting debts for and against the bank.

§ 7. If any person or persons shall be indebted to said branch bank, as maker or endorser of any note, bill, or bond, expressly made payable and negotiable at said branch bank, and shall delay payment thereof, it shall be lawful for the president of the branch bank, after having given thirty days notice thereof, to move the circuit court of the county of Mobile, on producing to said court before which the motion is made, the certificate of the president of the branch bank, that the debt is really and *bona fide* the property of said branch bank, for judgment; and all the debts due by said branch bank, by bond, bill, note or otherwise, to any individual or body corporate, may be sued for, and recovered in like manner.

Officers embezzling its funds.

§ 8. If any of the officers of the said branch bank, shall embezzle or fraudulently convert to his or their own use, any sum of money, bank note, bill of exchange, check, bond, or other security, placed under his care by virtue of his said office, he or they, his or their aider or abettors and counsellors, upon conviction thereof, shall be judged guilty of felony, and be sentenced to imprisonment in the public jail in the county in which the offence has been committed, for a term not less than twelve months, and there remain until he or they shall make good all damages which the bank may have sustained by his or their misconduct, and be fined at the discretion of the jury trying the offence, and shall forever thereafter be disqualified from holding any office of profit or trust in this state, and shall moreover be liable for the sum so embezzled.

Officers of the bank and members of general assembly not to endorse.

§ 9. It shall not be lawful for the directors, cashier, or other officers of the said branch bank, or any member of the general assembly to become security for each other, or any other person or persons at said branch bank.

When to commence discounting.

§ 10. It shall not be lawful for the said president and directors of the said branch bank, to commence operations, by discounting or issuing any notes or bills, until one-half of the capital stock of said branch bank, shall be had in specie in its vaults.

Debts of the bank limited.

§ 11. The total amount of the debts which the said branch bank shall at any one time owe, whether by bond, note, bill or contract, shall not exceed twice the amount of its capital, over and above the moneys then actually deposited in the bank for safe keeping, unless the contracting of any greater debt shall have been previously authorized by a law of this state; and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such case, be brought against them, or any of them, their or any of their heirs, executors or administrators, in any court of this state having jurisdiction, by any creditor or creditors of said branch bank, and may be prosecuted to judgment and execution, any condition, covenant, and agreement to the contrary notwithstanding; but this shall not be so construed as to exempt said bank, or the lands, tenements, goods or chattels of the same, and on their insufficiency, the state of Alabama, from being also liable for, and being chargeable with the said excess: such of the said directors who may have been absent when said excess was contracted or created, or who may have dissented from the resolution or act by which the same was contracted or created, may, respectively, exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank at the time the debt may be so contracted, and forthwith giving notice of the same to the comptroller of the state.

Credit of the state pledged.

§ 12. The credit of the state of Alabama is hereby pledged for the ultimate redemption and payment of all notes issued, and all debts contracted by said branch bank.

Collection of debts reciprocal.

§ 13. The remedy for collecting debts shall be reciprocal for and against the said branch bank.

Governor and commissioners authorized to issue state stock. For what amount and term.

§ 14. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required to issue certificates of state stock to an amount not exceeding two millions of dollars, to bear an interest not exceeding five per cent. per annum, payable semi-annually at the branch bank at Mobile, the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter that the state may choose:

Proviso.

Provided, That the certificates of stock shall be drawn in sums of from one to ten thousand dollars each; and it shall be the duty of the treasurer of the state to provide a suitable book and register the said certificates therein, and then deliver the same to the president and directors of the said Branch Bank, taking their receipts for the same;

Sales of certificates.

and it shall be the duty of the said president and directors to cause said certificates to be sold for cash at not less than par value, and for such premium as they can command above their par value; and the sum to be realized shall be applied to, and compose the capital of said Branch of the Bank of the State of Alabama at Mobile.

Revenue of the state pledged.

§ 15. To secure the regular and punctual payments of the interest, semi-annually, and the ultimate redemption of said stock, all the revenue of the state (except the university fund, the three per cent. fund, and the fund arising from the sale of the sixteenth sections,) shall be and the same is hereby pledged, and in case of a deficiency, the faith of the state is hereby pledged to provide such additional means as may be necessary.

BASTARDY.

1811—(7) Single women, pregnant or delivered, may complain to justice of the peace.

§ 1. When any single woman, who shall be pregnant, or delivered of a child which by law would be deemed a bastard, shall make complaint to any one or more justices of the peace, for the county where she may be so pregnant or delivered as aforesaid, and shall accuse any one of being the father of such child, it shall be the duty of such justice or justices, to issue process to the sheriff or coroner, or any constable of such county, against the person so accused as aforesaid, and cause him to be brought forthwith before him.

Examination before magistrate.

§ 2. Upon his appearance, it shall be the duty of the said justice or justices, to examine the said female, in the presence of the man alleged to be the father of the child, touching the charge against him; and if said justice or justices shall be of opinion, that sufficient cause appears, it shall be his or their duty to bind the said person, so accused, in bond, with good and sufficient security, to be and appear before the next county court, to be holden for said county, and in the mean time to be of good behavior.

County court to cause issue to be tried by a jury.

§ 3. The county court aforesaid, at their next term, shall have full and complete cognizance and jurisdiction of said charge of bastardy. And the court shall cause an issue to be made up, "whether the reputed father is the real father of the child, or not;" which issue shall be tried by a jury: *Provided nevertheless*, That the inquiry shall not be *ex parte*, but the imputed father shall have a right to appear, by himself or counsel, and controvert, by all legal evidence, the charge alleged against him.

Judgment against defendant not to exceed fifty dollars a year, for ten years.

§ 4. If the issue is found against the defendant, or imputed father, then he shall be condemned by the judgment of said court, to pay, not exceeding fifty dollars, at the discretion of said court, yearly, for ten years, towards maintenance and education of said child; and the said imputed father shall give bond and security, for the due and faithful payment of said sum of money, which shall be made payable to the said court, and laid out and appropriated, under their special order and direction, from time to time made, so that the same be not paid to the mother of said child; which bond shall be, and hereby is declared to have the same force, validity, and effect, as a judgment of said court, upon which executions may issue, as often as money thereon shall become due and payable: *Provided however*, That if said child should never be born alive, or being born, should die at any time, and that fact suggested upon the record of the county court, then and from that time, the bond aforesaid shall be void. (1)

Death of child to vacate the bond.

Judgment, when issue is found against the woman.

§ 5. If upon the trial of the issue aforesaid, it shall be found by the jury against the woman, or that the child imputed is not the child of the pretended father, then the judgment of the court shall be, that he be discharged hence, and that the woman making the complaint shall pay all costs occasioned thereby.

Child legitimated by intermarriage of its parents.

§ 6. If the mother of said child and the imputed father shall at any time after its birth intermarry, the child shall, in all respects, be deemed and held legitimate, conformably to the maxim of the civil law, and the bond aforesaid be void.

Guardian to be appointed by the court, who shall receive the money.

§ 7. It shall be the duty of the court to appoint a guardian or guardians to said child, to whom, upon his or her entering into good and sufficient security, for the faithful performance of his or her duty, the money shall be paid over by the court.

1816—(4) *Sec.* 1.
On demand of defendant, court to empannel jury of by-standers.

§ 8. Whenever a case of bastardy shall be returned to the county court, said court shall have power and authority to cause to be summoned and empannelled a jury, in the same manner as tales jurors are summoned, for the purpose of trying the issue of bastardy, if the defendant, or reputed father, shall demand the same.

1833—(9) *Sec.* 1.
Mode of legitimating.

§ 9. Whenever the father of any bastard child or children, shall desire to render any such bastard child or children legitimate, so as to enable them to inherit his estate in the same manner as children born in lawful wedlock do, it shall be lawful for any such father to file in open court, in either the county or circuit court of the county in which he resides, a declaration, or statement in writing, setting forth the names of the children proposed to be rendered legitimate, their ages, as nearly as may be, the name of their mother, that they are his natural children, and that he thereby recognizes them, and makes them capable of inheriting his estate in the same manner as if they had been born in lawful wedlock, which declaration shall be signed by the person making it, attested by the clerk of the court in which it is filed, and entered at full length of record: whereupon the said child or children in any such declaration, shall become the legitimate child or children of the person making such declaration, and be capable in law of inheriting his estate in the same manner as if they had been born in lawful wedlock: and if, at the time of filing any such declaration, the person filing the same shall desire to change the

Effect thereof.

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(1) On writ of error prosecuted by the putative father, upon a bastardy bond, the judge of the county court, and not the mother of the child, should be made defendant.—Brown et al. v. M'Lane, *Min. Rep.* 208.

Names of bastards, how altered.

name of any child or children therein mentioned, he shall set forth the fact, together with the name to which he desires the change to be made; whereupon, the name shall be changed accordingly, and the latter name shall become the lawful name of any such child or children.

Ib. Sec. 2. Any person may alter his or her own name.

§ 10. When any person shall desire to change his or her name, he or she shall file in the county or circuit court of the county in which he or she resides, a declaration or statement in writing, setting forth his or her then name, and the name to which he or she desires to change it; which declaration shall be subscribed by the person making it, with his or her then name, attested by the clerk, and entered at full length of record; whereupon, the name of such person shall be changed accordingly, and the latter name shall thereupon become the lawful name of such person: *Provided nevertheless*, That any such person shall, notwithstanding such change, be liable for five years, to be sued by his or her original name; unless when a contract in writing shall be made with him subsequent to his change of name, in which his latter name shall be recognized, or to which it shall be subscribed.

Proviso.

Ib. Sec. 3. Fees of clerk, &c. for attesting, &c.

§ 11. For attesting and recording the declaration in the first and second sections of this act, the clerk of the court in which they are filed shall be entitled to one dollar each; and when such declarations are filed in the county court of any county, the judge of said court shall be entitled to the like sum for each declaration, to be paid by the party filing the same.

BOATS.

1826—(12) Steam-boats to be examined by the harbor-master and wardens of the port of Mobile.

§ 1. It shall not be lawful for any steam-boat to ply for freight or passengers, between either of the ports of Mobile or Blakely, and any of the towns, landings or places, on either of the rivers Mobile, Alabama, Tombeckbee, or their tributaries, without having previously undergone a thorough survey and examination by the board of harbor-master and wardens of the port of Mobile, and been found, in all respects, staunch, well-provided and *river-worthy* for the space of at least one year thereafter: And the said board of harbor-master and wardens are hereby authorized and required, to make such survey and examination, at least once in every year, or oftener, if in the opinion of said board the same may be proper; and to charge and receive for every such survey and examination, the sum of ten dollars; and if, upon such survey and examination, the said board shall be satisfied, that the boat so examined, is staunch and well found, both in hull and machinery, and, in all respects, well found and river-worthy for one year thereafter, they shall grant a certificate thereof, and enter the same of record, in the port-wardens' office.

Board to grant certificate of soundness.

Owners, &c. of boats not certified, liable for damages.

§ 2. If the owner, agent, consignee, or master of any steam-boat, shall ply any such steam-boat, on either of the aforesaid waters, without having first obtained a certificate for such boat, as herein required, such owner, agent, consignee, and master, shall severally be liable for all damages which may occur to property shipped on such boat, in consequence of any casualty arising from the dangers of the river navigation, or from any accident to the engine or machinery of such boat. And in all suits for damages, arising under this act, the burthen of proof, shall rest upon the carrier; and the certificate of the board or harbor-master and wardens aforesaid, duly authenticated under their seal, shall be legal evidence of the transactions of said board.

§ 3. The harbor-master and wardens aforesaid, or any three of them, shall be surveyors of damaged property, brought into the port of Mobile, in any steam-boat, barge, or other craft: and they shall, upon every such survey, certify, under their hands, the amount of damages which any owner or shipper of such property may have sustained, and shall cause entries to be made, in a book to be kept for that purpose in their office, of all surveys made and certificates granted under this act; which surveys and certificates, duly authenticated by the official seal of the said board, shall be admitted as legal evidence in any court of this state; and for each survey, certificate and entry, they shall be entitled to two dollars, and for every duplicate thereof, one dollar; and the said wardens shall severally be entitled, for their services as surveyors of damaged property aforesaid, at the rate of three dollars per day. Harbor-master and wardens to examine damaged property. Compensation.

§ 4. This act shall not be construed to exempt the owner or master of any steam-boat from a recovery of damages, for the loss or damage of any article taken on board of said boat, according to the law in force before the passage of this act. Act, how construed.

§ 5. It shall be the duty of captains or commanders of steam-boats and barges, and other vessels navigating any of the navigable rivers in this state, to land all goods of any description at the landing for which said goods were shipped, and shall place them at least ten feet perpendicular above the edge of the water; unless the river shall be too high to admit of said goods being landed ten feet above the edge of the water; and in that case, it shall be the duty of said captain or commander to land said goods on the highest and most secure place within one hundred yards of said landing. 1830—(12) *Sec.* 1. Duty of commanders of boats in landing goods.

§ 6. If any captain or commander of any steam-boat or barge, or other vessel, shall neglect or fail to comply with the provisions of the first section of this act, the owner or owners, and the captains or commanders of such steam-boat or barge, shall jointly or severally forfeit and pay to the owner or owners of such goods, double the value of the goods, to be recovered before any court of record, or before any justice of the peace, as the case may require, together with double costs. *Ib. Sec.* 2. Penalty for neglect of duty.

§ 7. When any cotton bales or bags shall be torn by the use of what are called *cotton hooks* or *otherwise*, in loading or unloading on board of any steam-boat or barge, or other vessel, the owner or commander of such steam-boat or barge shall forfeit the freight of the bales so torn or damaged, and shall pay all damages to the owner or consignee of the cotton, to be recovered in the manner specified in the second section of this act. *Ib. Sec.* 3. Injury done to cotton bales by hooks or otherwise.

CATTLE, HORSES, AND OTHER STOCK.

§ 1. Every person in this territory, who hath any horses, cattle, or other stock, shall have a brand and ear mark, different from the brand and ear mark of every other person in the same county; which ear mark and brand shall be recorded in the office of the clerk of the county court of the county where such horses, cattle, &c. are; for which the clerk shall receive as his fee, twenty-five cents for all his services therein; and no brand or mark similar to a brand or mark already recorded, shall be admitted to record, but the person having the same shall be obliged to alter them, except as hereinafter excepted. 1807—(10) Owners of cattle, &c. to have marks and brands recorded.

Disputed marks, &c. may be settled by justice of the peace.

§ 2. When any dispute shall arise respecting the right to a brand, or mark, either party may apply to a justice of the peace of the county, who shall summon the adverse party to appear before him, on a certain day, therein expressed, not less than five, nor more than ten days from the time of application. And the justice shall, upon the request of either party, issue subpœnas for such witnesses as they may require, directed to any constable of the said county; who, together with the witnesses, shall receive the same fees, and be liable to the same penalties as are allowed or inflicted for such services and attendance, or neglect, in the county courts. And it shall be the duty of the said justice to give judgment thereon; a transcript whereof, certified by the said justice, shall be a sufficient authority for the clerk to record the said brand and mark: *Provided*, That every person who may think himself or herself aggrieved thereby, may appeal to the next county court, to be held in the said county, and not after.

Party aggrieved may appeal to county court.

Slave or Indian not to be sent to mark cattle.

§ 3. No person whosoever, shall send or permit any slave or Indian to go into any of the woods or ranges in the territory, to brand or mark any horse, mare, colt, mule, ass, cattle, hog, or sheep, under any pretence whatsoever, unless the said slave be in company, and under the direction of some reputable white person, who shall therein proceed according to the provisions of this act; and if any person be convicted thereof, he shall forfeit and pay for every animal so branded and marked, twenty dollars; recoverable by action of debt, in any court of this territory, having jurisdiction; one-half to the use of the county, and the other half to the informer.

Penalty.

1807—(11) *Sec* 1. Penalty for importing distempered cattle.

§ 4. Any person importing into this territory, cattle afflicted with a contagious distemper, shall be subject to a fine of ten dollars for every head so imported, recoverable before a single magistrate, with a right of appeal; one-half of which shall be for the use of the territory, and the other half for the use of the person suing for the same.

1812—(4) *Sec*. 1. Stock not to be driven from their own range.

§ 5. It shall not be lawful for any drover or other person, to drive any horses, mules, cattle, hogs, or sheep from the range to which the same may belong; but it shall be the duty of every drover, or other person, who may be driving off horses, mules, cattle, hogs, or sheep, if any such stock, not properly belonging to his drove, should join them, to immediately halt his drove at the nearest pen, or some other convenient place, and separate all such stock as do not properly belong to him, or the person or persons he may be employed to collect or drive stock for.

Ib. Sec. 2. Penalty.

§ 6. Any drover, or other person who shall violate the provisions of the preceding section, shall, for every offence, forfeit and pay the sum of twenty dollars, with costs, recoverable before any justice of the peace, for the use of the person suing for the same; and shall moreover be liable for damages, in an action on the case, to the party injured.

Ib. Sec. 3. Masters accountable for their slaves.

§ 7. When any slave or slaves, employed in driving stock of any kind, shall violate the provisions of this act, his or their owner or employer shall be liable for such transgression.

1807—(5) *Sec*. 7. Stallions running at large may be caught and gelded.

§ 8. If any person shall wilfully, or by neglect, suffer any stallion, above the age of two years, except such as are usually kept up and happen to get out by accident, to run at large in the woods, or in any unenclosed range, it shall be lawful for any person to catch and geld such stallion at the risk of the owner.

CLAIMS AGAINST THE STATE.

WHEREAS, from the vague and indefinite manner in which accounts are made out against the state, and the unsatisfactory manner in which they are usually attested, many frauds may be practised and errors committed in the settlement of the same: Therefore,

1820—(27) Preamble.

§ 1. *Be it enacted, &c.* That all accounts exhibited against this state, shall have every charge distinctly made out, and clearly defined, and shall be transmitted to the comptroller of public accounts on or before the first day of October in each year, and it shall be his duty to audit the same, and make his remarks on each, and lay them before the legislature within ten days after their meeting.

Accounts, how made out. Shall be audited by the comptroller.

§ 2. All accounts against this state shall be certified by such officers only as are known to the law, and who directed the respective duties and services to be performed for the public; and said accounts shall also be attested, which attestation shall be subscribed by the party making the demand, and be as follows: "   county: Personally appeared A. B. before me, C. D., who, after being duly sworn, saith that the above (or within) account of   dollars,   cents, is truly and justly due him from the state of Alabama, and that he has never received any part thereof, either by discount or otherwise, directly or indirectly. Witness my hand, A. B. Sworn to before me, this   day of   . C. D., Justice of the Peace."

Accounts to be certified only by officers known to the law. To be sworn to before justice of the peace. Form, &c.

§ 3. No account, not made out and authenticated as above directed, shall be paid, until the same is done according to the requisitions of this act.

Not to be paid until made out and authenticated according to this law.

CLAIMS AGAINST COUNTIES.

§ 1. THE justices of the county court of each county, (the chief justice of the orphans' court being one,) shall in term time, audit and allow on due proof, all accounts and demands legally chargeable upon their respective counties: and every account, or such part thereof as is so allowed, shall be recorded by the clerk in a book to be kept for that purpose; and the claimant shall receive a warrant on the county treasurer, signed by the clerk, for the amount so allowed; and the clerk shall number the warrants issued as aforesaid, in each year, beginning at the term first held in each year, and progressing through the same in numerical order; and shall register the number and amount of each warrant in the aforesaid book.

1806—(2) Sec. 6. Mode of auditing county claims.

§ 2. All claims, of every description whatsoever, which may be due to any person or persons, or body corporate, from any county in this state, shall be presented for allowance to the competent tribunal, within twelve months after they accrue, or become payable.

1823—(9) Sec. 1. Claims to be presented within 12 months,

§ 3. All claims, as aforesaid, not presented for allowance as is prescribed in the foregoing section, shall be barred from recovery, both in law and equity: *Provided*, That nothing herein contained shall affect the claims of minors, who have no guardians appointed, and persons *non compos mentis*, until they may be provided for by law, or until twelve months after the removal of such disability.

Ib. Sec. 2. otherwise to be forever barred.

§ 4. The clerks of the several county courts shall keep a correct list of the amounts of all claims allowed, as is provided for by this act, with the names of the persons to whom granted; which list shall be ready for the inspection and examination of the judges of the re-

Ib. Sec. 3. Clerks to keep list of claims allowed.

spective county courts, and commissioners of revenue and roads, when they assess the county levy, and at all other times when required.

1828—(12) *Sec.* 4. County treasurer to register orders, and pay them in rotation.

§ 5. It shall be the duty of the county treasurer, to register all orders which may be drawn on the treasury, and to pay the same only in the order in which the same shall be registered in his office; and the collector of taxes shall receive no orders in payment of taxes,[1] except jury certificates.

CLERKS—OF THE CIRCUIT AND COUNTY COURTS.

Con. Ala. Art. 5. *Sec.* 15. Elected by the qualified electors. a *See* § 13, 14. Judge to fill vacancy.

§ 1. Clerks of the circuit and inferior courts in the state shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes, and in such manner as may be prescribed by law;[a] and should a vacancy occur, subsequent to an election, it shall be filled by the judge or judges of the court in which such vacancy exists; and the person so appointed, shall hold his office until the next general election: *Provided however*, That after the year one thousand eight hundred and twenty-six, the general assembly may prescribe a different mode of appointment, but shall not make such appointment.

1812—(20) *Sec.* 3. Clerks required to enter into bond.

§ 2. Every clerk shall, at the time of his admission and qualification, enter into bond, with security, to be approved of by the court, in the penalty of five thousand dollars,[2] payable to the governor and his successors in office, with condition for the due and faithful execution of his office, and that he will not remove, or suffer to be removed out of the county, the records and papers of the court, whereof he is clerk, or any part thereof, except in cases allowed by law; which bond shall be recorded,[3] and then delivered to the presiding judge of the court, and be by him transmitted to the secretary's office, within three months after it is so executed, there to be registered and safely kept among the papers of his office; and may be prosecuted upon, and the penalty thereof recovered, against any such clerk, for any malfeasance in office; and any clerk presuming to execute his office, without first entering into such bond, shall forfeit and pay one thousand dollars, and suffer three months imprisonment. A copy of such bond shall be good in evidence, and have the same validity as the original, if it were present in court.

Penalty for acting without bond. Copy may be given in evidence.

1819—(6) *Sec.* 14. Bond of clerk of circuit court.

§ 3. The clerks of the several circuit courts shall give bond, with security, payable to the governor and his successors in office, in the penalty of ten thousand dollars, for the safe-keeping of the records, and the faithful discharge of the duties of their offices; which bond shall be lodged in the office of the secretary of state, and may be put in suit, on the assignment of the governor, by the party or parties injured, in his or their own name, and shall not become void upon the first recovery, but may from time to time be put in suit, by action of debt, until the whole penalty be recovered; and if it shall be discovered, that any of the said clerks shall have violated the oath prescribed by the constitution, or willingly, or corruptly have done anything, contrary to the true intent and meaning of the same, such clerk shall be deemed, upon conviction, guilty of misbehavior in office, and shall be removed therefrom; and shall forever be incapable of holding any office, civil or military, in the state.

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[1] This section has reference to, and is designed to repeal in part the 4th section of an act passed in 1812, which made all claims against counties, liquidated and allowed by the county courts, receivable in payment of *county* taxes. The exception therefore in favour of jury certificates cannot extend further than the original law, and is applicable only to taxes levied for *county* purposes.—See "Jurors and Jury,"—§ 13.

[2] Clerks of the *circuit* court are required to give bond in a penalty of ten thousand dollars.—See the next section.

[3] Where the bond is to be recorded.—See "County Officers."

Penalty for violating the constitutional oath.

§ 4. All clerks of the circuit and county courts, shall enter into bond and security, for the faithful performance of their several duties, as are by law now prescribed, before the person now authorized to take and approve the same, on or before the first day of the term next succeeding their elections, otherwise the said office shall be considered vacant, and the vacancy shall be filled, as heretofore prescribed in other cases of vacancy in the said office.

1822—(13) *Sec.* 1. Bond to be given first court after election, or office vacated.

§ 5. If at any time it shall be made known to the judge of the circuit or county court, that any person who has been, or may be appointed, or elected clerk of said county or circuit court, has failed to give bond, with sufficient security, for the faithful performance of his duty, it shall be the duty of said judge, to require said clerk to give such security within one month, or that said office shall be then vacated; and it shall be the duty of such judge, to fill such vacancy as in other cases.

Ib. Sec. 3. In case of failure, judge shall require the bond in one month.

§ 6. Any clerk of the circuit or county court, whenever required by the judge of the court whereof he is clerk, shall give such additional security, as may be required by said judge, within one month after notice of such requisition; and in case any clerk shall fail to comply with the provisions herein contained, the office of said clerk is declared vacated thereby, and the vacancy shall be filled, as in other cases provided by law.

Ib. Sec. 7. Clerks may be required to give additional security.

§ 7. It shall be the duty of every clerk of the several courts in this state, within three months after the final determination of any suit, or prosecution, to make up, and enter in well-bound books, to be kept by him for that purpose, a full and complete record of all the proceedings in such suit or prosecution; and every clerk who shall fail to make and enter a record as aforesaid, shall forfeit and pay the sum of twenty dollars, to be recovered before any court having jurisdiction thereof, and applied to the use of the state. And in order to secure a due execution of the duty hereby required, the several parties to the suits, or prosecutions, shall at all times, have a right to inspect said books and records of the court, in the presence of the clerk, in order to see if the records of the suit to which he is a party, have been duly made up, according to the directions of this act: and the clerks shall show the said books and records accordingly, under the penalty of fifty dollars, to be recovered, and appropriated to the use of the party so applying and refused.

1807—(19) *Sec.* 50. Clerks to make complete record of proceedings within three months after final judgment. Penalty of 20 dolls. for failure. Parties to have access to records. 50 dolls. penalty for refusing.

§ 8. The clerk of every court shall enter in a docket, or book to be kept by him for that purpose, a list of all executions by him issued, specifying therein the names of the parties, the amount of the judgment, interest, and costs, distinctly in such execution; the name of the person to whom it is delivered, to what county directed, the date when issued, and the return day thereof; and when the same is returned, shall without delay, record the return at large on the same page, or folio, on which the execution is entered, and shall constantly carry the said book to the court of which he is clerk.

1812—(20) *Sec.* 5. Clerk to keep an execution docket. What to specify.

§ 9. In case any clerk of any of the courts of this state, shall fail to enter on the execution docket, any return of any execution, which shall be made by the proper officer of the court, within three days after

1822—(20) *Sec.* 2. Clerk not entering return on execution docket, liable for amount of execution, &c. the said return shall be made, it shall be the duty of the court, on motion of the plaintiff or plaintiffs in execution, or his or her attorney, to render judgment against said clerk, and his securities, or either, or any of them, for the amount of the execution, together with interest and costs: Notice of motion. Contested facts. *Provided*, That those against whom the judgment shall be rendered, shall have one day's notice of the motion, and that any fact which shall be contested by said clerk and securities, or any, or either of them, shall be tried by a jury.

Ib. Sec. 3. Execution docket to be kept on clerk's table during the whole court. § 10. It shall be the duty of the clerks of the several courts in this state, to keep in the court-house, on the clerk's table, the execution docket, during the whole term of the session of the court; and if any clerk shall fail so to do, he shall be guilty of a contempt of court, and be punished accordingly; and shall also be liable to any person aggrieved, in an action of trespass on the case.

1812—(20) *Sec.* 4. Records not to be removed from the county unless in danger. § 11. It shall not be lawful for the court of any county, or the clerk of such court, to remove, or cause to be removed, the records and papers of the same, or any part thereof, without the county, except in cases of actual invasion, or insurrection, where, in the opinion of the court, the same will be endangered; or where, for want of such opinion, by the suddenness of the alarm, or danger, the clerk shall at his own discretion, remove the same, returning them as soon as the alarm or danger ceases; or except in cases also provided for by law. Any member of a court, or the clerk of the same, so offending herein, shall be deemed guilty of a misdemeanor in office, and forfeit therefor and pay the sum of one thousand dollars.

Ib. Sec. 9. Records to be delivered over to successor. § 12. Whenever the office of clerk to any court shall become vacant, by any cause whatsoever, the records, papers, books, stationary, and everything belonging or appertaining to the same, shall be delivered over to the successor in office, by the person or persons having the same, whenever demanded, under the penalty of five thousand dollars, to be recovered against such person, and every of them so detaining the same, or any part thereof; Successor's duty to demand, &c. and it is hereby declared to be the duty of such successor, to demand, receive, and take into his care and safe keeping, all the books, records, papers, stationary, and every other matter and thing appertaining to the said office; and in case of refusal or detention of them after demand as aforesaid, he shall give information thereof to the attorney general,[1] who shall prosecute accordingly.

1819—(21) *Sec.* 1. Clerks liable to fine or removal for neglect, malpractice, &c. § 13. If any clerk of any court in this state, shall willingly make any false entry, interlineation, or erasure of a letter, or change any record in his keeping belonging to his office, or shall neglect to record any will, deed, or other matter proper to be recorded in his office, within a reasonable time after the same shall have been lodged in his office to be recorded; or shall neglect to make out and keep a fair and correct index to the matters recorded in each book; or shall neglect to keep in regular file all the papers belonging to his office, keeping every subject matter in its proper and peculiar file, and the papers of each suit together; or shall refuse or neglect to make out in a reasonable time after application of any person demanding the same, a transcript of any record in his office; or shall make out the same so erroneously or incorrectly that the court to which it is taken cannot proceed thereon; or shall refuse or neglect to perform any of the duties required by law to be performed by such clerk; such clerk shall, upon trial and conviction, be deemed guilty of a misbehavior in office, and shall be subject to a fine not exceeding two hundred dollars, or be removed therefrom by the court, and shall also be liable to an action on the case for damages, in behalf of the party aggrieved.

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[1] At the passage of the act from which this section is taken, and even as late as 1818, the officers whose duties corresponded with those of the solicitors at the present time, were styled "Attorneys General."

§ 14. All charges against clerks for misbehavior in office, shall be exhibited to the court in writing, and the court shall direct the facts to be tried by a jury; and on conviction thereof, such clerk shall be fined or removed from office, as the court of which he is clerk shall think proper: *Provided,* That every clerk against whom charges may be exhibited, shall be entitled to a copy thereof, and shall be permitted to make his defence on trial.

Ib. Sec. 3. Charges, how exhibited and tried.

§ 15. It shall be the duty of the judges of the circuit and county courts of this state, at the first term of their court which shall be held in each county after the passage of this act,[a] and biennially thereafter, to appoint one or more persons, not exceeding three, learned in the laws, to examine the offices of their respective courts.

1830—(18) *Sec.* 1. Clerks' offices to be examined biennially.

[a] *January* 20, 1830.

§ 16. The person or persons so appointed, shall take and subscribe an oath, well and truly to examine into the records of said courts, the fee-books kept by the clerks thereof, and make a true return of the general state of said offices; and shall, in the vacation after the said court, examine said offices, and report the general state of the same to the next court thereafter:—and if on such examination, any misfeasance or malfeasance shall be discovered, it shall be particularly specified in said report: which report when made, shall be recorded in the clerk's office of said court, and shall be subject to the inspection of any person without fee.

Ib. Sec. 2. Examiners' oath and duties.

Misfeasances to be particularly specified in examiners' report.

Report to be recorded.

§ 17. The persons so appointed shall receive such compensation for their services as may be allowed them by the judge of the county court, and commissioners of revenue and roads.

Ib. Sec. 3. Examiners' compensation.

§ 18. The judges of the county courts, and commissioners of revenue and roads are hereby authorized to make an allowance to the clerks of the county and circuit courts, for books and stationary purchased by them for the use of their offices respectively.

1822—(24) *Sec.* 1. Annual allowance to clerks for books and stationary.

Note.—By act of 1815, the county court was empowered to allow clerks annually for their services. not exceeding fifty dollars, out of the county treasury. See "County Officers,"—§ 1.

Clerk of the Supreme Court.

§ 19. The judges elect, or a majority of them of the circuit courts of the state of Alabama, are hereby authorized immediately after the passage of this act, to appoint a clerk of the supreme court, who shall hold his office during five years, but be removable at any time for misbehavior in office, two-thirds of the judges of the supreme court concurring in such removal.

1825—(1) *Sec.* 1. How appointed, and term of office.

§ 20. All clerks of the supreme court, who may hereafter be appointed, shall execute a bond with good and sufficient security, to be approved of by the judges of the said circuit courts, and in such sum as they, or a majority of them may direct, conditioned for the faithful performance of the duties of said office: *Provided nevertheless,* That a majority of said judges may at any time require said clerk to give additional or other security; and if said clerk shall fail so to do within a reasonable time, to be prescribed by the court, the said office shall be thereby vacated.

Ib. Sec. 2. To give bond.

§ 21. A majority of the said judges may at any time fill any vacancy in said office of clerk, and shall, or some one of them shall,

Ib. Sec. 4. Judges to fill vacancy.

administer such oaths of office, as may be prescribed by law, to said clerk, previous to his entering on the duties of his office.

Ib. Sec. 5.
Clerk to keep his office at Tuscaloosa.

§ 22. The clerk of the supreme court shall, within three months after the passage of this act, establish his office at Tuscaloosa; at which place the said office shall be kept and remain, so long as the seat of government shall continue at said place.

1828—(31)
Sec. 1.
Clerk of supreme court to keep his office open the whole day.

§ 23. The office of the clerk of the supreme court shall be kept open during the whole of each day (Sundays excepted) for the purpose of doing all necessary business with members of the bar, or the persons having lawful business therein; any rule of said clerk, prescribing *office hours*, to the contrary notwithstanding.

Ib. Sec. 2.
Penalty for refusing admittance.

§ 24. If any clerk shall refuse admittance into said office, to any person or persons having lawful business to transact in said office at any time, without a reasonable cause to be judged by the court, such clerk shall be fined in any sum not exceeding twenty dollars.

See "Judiciary—Supreme Court,"—§ 11.

COMMISSIONERS OF REVENUE AND ROADS.

1821—(4)
Sec. 28.
Four to be elected in each county.
Powers.

§ 1. At every general election[1] there shall be elected in each county in this state, four commissioners of the revenue and roads, any two of whom, together with the judge of the county court, shall constitute a court, to levy the county tax, to lay out and discontinue roads, and shall have and exercise all the power in relation to roads, bridges, highways, ferries, and causeways, which are at present given to, and exercised by the orphans' or county court; and make the appointment of such county officers as by law are directed to be appointed by the county court.

1821—(28)
Sec. 1.
[a 1824—(27)
Sec. 2.]
When to hold court.
b *The foregoing.*
Judge may do business, if commissioners do not attend.

§ 2. On the first Mondays in *February* and *May*, [a]*the third Monday in August*, and the first Monday in *December*, in every year, the judges of the several county courts in this state, together with the commissioners of revenue and roads, of their respective counties, or with any two of them, shall hold a court for the purposes prescribed in the twenty-eighth section of the act[b] to which this act is intended as an amendment, and the said judge and commissioners shall continue in session until the business is completed: *Provided nevertheless*, If said commissioners shall fail to attend on or before the third day of said term, the judge of said county shall proceed to levy the tax, and appoint the officers required by law.

Ib. Sec. 3.
To have control of county funds.

§ 3. The judges of the county courts, together with the commissioners aforesaid, or a majority of them, shall have control over the funds in the county treasury; and they, or a majority of them shall have power to make appropriations for defraying expenses incurred for county purposes: *Provided*, Nothing herein contained shall be so construed, as to authorize said courts, to do any other than county business, at the several terms provided to be holden by this act.

1821—(24)
Sec. 5.
May make appointments between terms of court.

§ 4. When any vacancy happens by resignation or otherwise, in any office, the appointment of which is vested in the county court, it shall be lawful for the judge of said court, and the commissioners of roads and revenue, to make the appointment between the terms of court, and the appointment shall be as valid as if made at the regular term.

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[1] Every third year, commencing from the general election in August, 1827. See the last section in this title.

§ 5. No commissioner of revenue and roads shall be eligible to the appointment of assessor or tax collector, or shall discharge the duties thereof, either as principal or agent, in any manner whatever, during his continuance in office.

1822—(11) *Sec.* 10. Not eligible to office of tax-collector.

§ 6. The commissioners of revenue and roads, shall be commissioned in the manner hereinafter prescribed.

1823—(23) *Sec.* 1. Commissioners to be commissioned

§ 7. Within five days after each election, it shall be the duty of the sheriff of each county, to return to the judge of the county court a list of the four persons having the greatest number of votes, whose duty it shall be to commission them: and the persons so commissioned, shall, before they proceed to the discharge of their duties, take and subscribe the following oath, to wit: "I, , do solemnly swear, (or affirm, as the case may be) that I will faithfully discharge the duties imposed on me as a commissioner of revenue and roads, for the county of : so help me God."

Ib. Sec. 2. by judge of county court.
To take oath.

§ 8. Should a vacancy occur, the judge of the county court, together with the commissioners of revenue and roads in office, are hereby authorized and required to fill such vacancy; and the person so appointed, shall hold his office until the next stated election for commissioners.

Ib. Sec. 3. Vacancies, how filled.

§ 9. Whenever the judge of any county court shall fail to meet the commissioners of revenue and roads, by the second day of the term of any regular court, the commissioners, or a majority of them, shall proceed to transact the business devolving on said court.

Ib. Sec. 4. May transact business without judge.

§ 10. Commissioners of revenue and roads, shall be exempt from serving on juries, working on roads, and performing ordinary militia duty, during the time they act as such.

Ib. Sec. 5. Exempt from certain duties.

§ 11. The commissioners of roads and revenue, shall hereafter be elected for the term of three years.

1827—(6) *Sec.* 8. To serve 3 years.

COMMISSIONS.

§ 1. All commissions shall be in the name, and by the authority of the state of Alabama, be sealed with the state seal, signed by the governor, and attested by the secretary of state.

Con. Ala. Art. 4. *Sec.* 13.

CONTEMPTS.

§ 1. *Whereas*, the government of this territory is instituted for the peace, protection, and happiness of the people thereof; and it being contrary to these objects that any man, or body of men, should have, or exercise in any case, an unlimited, arbitrary power to fine and imprison for offences against him or themselves, in any capacity whatever: *And whereas*, the trial by jury in all penal, as well as criminal cases, is both a safe and adequate mode of investigation and decision, and should only be suspended in cases of absolute necessity: *Be it enacted*, that no court shall, for any contempt against such court, pass judgment, or decree, order, or inflict, or cause to be inflicted, any fine exceeding the sum of twenty dollars, nor any imprisonment exceeding twenty-four hours, without the trial by jury, to assess the amount of such fine, and determine the duration of such imprisonment.

1807—(19) *Sec.* 2. Preamble.
Contempt of court, how punished.

Ib. Sec. 3. Contempt of judge or justice, how punished.

§ 2. No judge, for any contempt offered to him, shall have power to order and inflict, or cause to be inflicted, any fine exceeding the sum of six dollars, nor any imprisonment exceeding six hours. And if any court, or judge, shall offend herein, the person or persons so offending, shall be deemed guilty of a misdemeanor in office; and shall moreover be subject to the action of the party injured, for damages, to be assessed by a jury. And in all cases of trial by jury for any contempt, the truth of the matter may be given in evidence, by the defendant, on the general issue.

Ib. Sec. 4. To what cases this law does not apply.

§ 3. The foregoing restrictions are not intended, nor shall they be construed, to affect cases arising under the militia laws; nor causes where a party served with process from any court, judge, or justice, shall refuse to answer according to law, or to perform any decree, judgment, or order of the same.

1814—(17) *Sec.* 24. Justice's power to fine and imprison for contempts.

§ 4. No justice of the peace, or of the quorum, for any contempt offered to him, shall have power to order or inflict, or cause to be inflicted, any fine exceeding the sum of six dollars, nor any imprisonment exceeding six hours, and then only when such contempt shall be offered, whilst such justice is sitting in judgment; and if any justice of the peace, or of the quorum, shall offend herein, he shall be deemed guilty of a misdemeanor in office, and shall moreover be subject to the action of the party injured, for damages to be assessed by a jury.

NOTE.—For contempts offered to the general assembly, while in session, by any person not a member, the offender may be punished by imprisonment, not exceeding forty-eight hours.—See "General Assembly,"—Con. Art. 3, sec. 17.

CONVEYANCES.

1803—(3) Conveyances acknowledged or proved, to be received in evidence.

§ 1. If any deed or conveyance of lands, tenements, or hereditaments, lying and being in this territory, heretofore made and executed, and not already acknowledged or proved according to law, or hereafter to be made and executed, shall be acknowledged by the party or parties, who shall have executed it; or be proved by one or more of the subscribing witnesses to it, that such party or parties, signed, sealed, and delivered the same, as his, her, or their voluntary act and deed, before one of the judges of the superior court of this territory, or one of the justices of any county court of that county, in which the lands, tenements, or hereditaments are situated; and if a certificate of such acknowledgment or proofs shall be written upon, or under the said deed or conveyance, and be signed by the person before whom it was made, then every such deed or conveyance, so acknowledged or proved, and certified, shall be received in evidence in any court of this territory, as if the same were then and there produced and proved. (1)

Not to be recorded without proof.

§ 2. No conveyance of lands, tenements, or hereditaments, lying and being in this territory, which has been made and executed, and not already acknowledged or proved according to law, or which shall be made and executed, shall be recorded in any clerk's office in this territory, unless the execution of the same shall have first been acknowledged, or proved and certified, in the manner herein directed.

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(1) A deed of conveyance for land, though not attested by a subscribing witness, nor recorded, may nevertheless, on proof *aliunde*, be read in evidence. —Robertson & Barnwell *v.* Kennedy & Kitchens,—1 *Stewt. Rep.* 245.

Ib. Sec. 4. When conveyor and witnesses are non-residents.

§ 3. If the party who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this territory, or the witness thereto, reside not in this territory, but in some other territory or state in the Union; then the said acknowledgment or proof, made before, and certified by the chief justice of the United States, or any associate justice of the supreme court of the United States, or a district judge of the same, or any judge or justice of the supreme or superior court of any territory or state in the Union, shall be as good and effectual, as if it had been made before, and certified by one of the judges of the supreme court of this territory.

Ib. Sec. 5. Where they reside in a foreign kingdom.

§ 4. If the party who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this territory, or the witness thereto, reside in a foreign kingdom, state, nation, or colony; then the said acknowledgment or proof made before any court of law, or mayor, or other chief magistrate of any city, borough, or corporation of the said foreign kingdom, state, nation, or colony, in which the said party or witnesses reside, certified by the said court, mayor or chief magistrate, in the manner such acts are usually authenticated by them, or him, shall be as good and effectual, as if it had been made before, and certified by one of the judges of the supreme court of this territory.

Ib. Sec. 6. Foregoing provisions include acknowledgments by married women.

§ 5. The two preceding sections of this act shall be construed to extend to, and comprehend acknowledgments of deeds or conveyances, which shall be made by *femes covert* who reside out of this territory, and in any other territory, or state in the Union; or in any foreign kingdom, state, nation, or colony.

Ib. Sec. 8. When grantor or witness is dead, how proved.

§ 6. *And whereas*, it is necessary that provision should be made for proving deeds or conveyances of lands, tenements, or hereditaments, where the grantors and witnesses are dead: *Therefore be it enacted*, That if the grantor, or witnesses of any such deed or conveyance be dead, or cannot be obtained, it shall be lawful for any of the officers hereinbefore mentioned, as the case may require, to take, under oath or affirmation, the examination of any person or persons, to prove the hand-writing of such deceased witness or witnesses; or where such proof cannot be had, then to prove the hand-writing of such grantor or grantors, which shall be certified on, or under such deed or conveyance, and signed by the officer before whom such proof shall have been made; and such deed or conveyance, so proved and certified, shall be received in evidence, and be recorded by the clerk of the county court of the county in which the said lands, tenements or hereditaments are situated, in the same manner as other deeds or conveyances are directed by this act.

1812—(13) *Sec.* 1. Deeds may be acknowledged or proved before superior judge, or justice of the county court. Form of certificate of acknowledgment.

§ 7. Any deed or conveyance of real estate may be admitted to record, if acknowledged by the maker or makers thereof, or be proved by any of the subscribing witnesses thereto, before any one of the superior judges, or justices of the quorum of any county court in this territory; and the following shall be the form of the certificate of acknowledgment, or probate of all deeds, to wit: "Mississippi territory,—*ss.* county: personally appeared before me, esquire, a judge of the said territory, or justice of the quorum of said county (as the case may be) the above named A. B. who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid C. D. Given under my hand and seal this day of :" and in case of probate, by a subscribing witness, thus; (as above to the end of the description of the judge or justice) "the above named E. F.

Form of certificate of probate.

one of the subscribing witnesses to the foregoing deed, who being first duly sworn, deposeth and saith, that he saw the above named A. B. whose name is subscribed thereto, sign, seal, and deliver the same to the said C. D.; that he, this deponent, subscribed his name as a witness thereto, in the presence of the said A. B.; and that he saw the other subscribing witness (or witnesses, naming them as the case may be) sign the same in the presence of the said A. B., and in the presence of each other, on the day and year therein named. Given under my hand and seal," &c.

Ib. Sec. 2. Deeds executed out of the territory, may be admitted to record in the county where the land lies.

Certificate to accompany probate, &c.

§ 8. Any deed of real estate lying in this territory, made or executed by any person or persons residing without the limits of the same, may be admitted to record in the clerk's office, of the county where such estate may lie, if acknowledged or proved in the manner required by this act, before any judge or justice of any court, or notary public, of the state or territory, in which the maker of such deed may be: *Provided*, That the certificate of such acknowledgment or probate, shall be accompanied by a certificate of the clerk of the court, to which such judge or justice may belong, that such judge or justice is of such court, and that due faith and credit is to be given to any act done by them, when acting in their official character; and the seal of office, if any there be, shall be affixed to such certificate.

Ib. Sec. 3. Such certificate valid, though informal.

§ 9. Any certificate of probate or acknowledgment of any such deed, shall be good and effectual, if it contain the substance, whether it be in the form or not, of that set forth in the first section of this act.

1818—(13) *Sec.* 1. Deeds and relinquishments of dower may be acknowledged before clerks.

§ 10. Hereafter, the clerks of the several superior and county courts in this territory, may lawfully take and certify acknowledgments of deeds of conveyance of real estate, and relinquishments of dower, within their respective counties, in like manner and form as is now required by law, before judges of the superior court, and justices of the quorum.

Ib. Sec. 2. Fee 50 cents.

§ 11. For every certificate so made, the said clerks and justices of the quorum shall be allowed a fee of fifty cents, to be paid by the party at whose instance the same was made.

1819—(12) *Sec.* 1. Or two justices of the peace.

§ 12. Hereafter, any two justices of the peace, may take the acknowledgment or probate of deeds, and the relinquishment of the right of dower by *femes covert*, in the same manner, and under the same regulations, that judges, justices of the quorum, or clerks of the courts, are now authorized to take such acknowledgment, probate, or relinquishment, and the certificate of such justices of the peace, that such acknowledgment, probate, or relinquishment has been taken by them, shall be as available in law, and such deed shall admitted to record thereon, in the same manner, and under the same regulations as if the acknowledgment, probate, or relinquishment of dower, had been made, and a certificate thereof given by a judge, justice of the quorum, or clerk of a court.

1820—(17) *Sec.* 1. Judges of circuit court, and justices of county court, authorized to take acknowledgments, &c.

§ 13. Judges of the circuit courts and justices of the county courts respectively, may take acknowledgments of deeds and relinquishments of dower, in the same manner that justices of the quorum were authorized to do, under the laws of the Alabama territory.

Ib. Sec. 2. Acknowledgments heretofore made, legalized.

§ 14. All acknowledgments of deeds and relinquishments of dower, which have been heretofore made before judges of the circuit courts, or justices of the county courts, respectively, are hereby legalized and made valid, to all intents and purposes whatever.

1831—(1) *Sec.* 1. Clerks of circuit court

§ 15. The clerks of the circuit courts of the several counties of this state may take and certify the acknowledgment or proofs of deeds and relinquishments of dower, whether the lands, tenements, or hereditaments therein expressed, be situated in the said county or elsewhere, in this state; which said acknowledgment or proof of deeds and relinquishment of dower, shall have the same construction and effect, and be as good and available in law, as if such acknowledgment or proof, and relinquishment of dower had been made before a judge of the circuit or county court, a clerk of the county court, or two justices of the peace; and for every certificate so made, the said clerk shall be entitled to a fee of fifty cents, to be paid by the party at whose instance the same was made.

may take acknowledgments, &c. whether lands lie in their own county or not.

§ 16. Any notary public of this state, may take and certify the acknowledgments or proofs of deeds, and relinquishments of dower, in any county for which he is commissioned, in like manner and form, as is now required by law, before judges of the circuit and county courts, clerks of the county courts, and two justices of the peace, and shall be entitled to the like compensation.

Ib. Sec. 2. Notaries public to have like power with judges, &c. in taking acknowledgments.

§ 17. All acknowledgments of deeds, or proof of deeds of conveyance of real estate, and relinquishments of dower, which have been heretofore made before any clerk of any one of the circuit courts of this state, or any notary public, duly commissioned within the same, are hereby legalized and made valid, to all intents and purposes whatever.

Ib. Sec. 3. Acknowledgments heretofore made, legalized.

§ 18. Any deed or deeds of lands heretofore acknowledged or proved before any justice of the peace, shall be valid and operative under the provisions of this act, and the same are hereby legalized: and any deed or deeds for lands heretofore acknowledged, or proved, before any justice of the peace, judge of the county court, or judge of the circuit court, shall be valid and operative: *Provided*, That nothing herein contained, shall be so construed as to prejudice the rights of persons not a party to any such deed or deeds.

1823—(8) *Sec.* 3. Deeds acknowledged before justices and judges, legalized.

§ 19. Any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, which shall be made and executed after the passage of this act, shall be void and of no effect against a subsequent *bona fide* purchaser, or a mortgagee, for a valuable consideration, not having notice thereof, unless such deed or conveyance shall be acknowledged, or proved and certified, and lodged within six calendar months after the time of signing, sealing, and delivering the same, with the clerk of the county court, in the county in which the said lands, tenements, or hereditaments are situated, to be recorded by the said clerk: *Provided nevertheless*, That such deed or conveyance shall, as between the parties and their heirs, be valid and operative.[1]

Ib. Sec. 2. Deeds void against *bona fide* purchaser, unless recorded in six months after their execution.

Proviso.

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[1] The provisions of this section were enacted verbatim in the 7th section of an act entitled "An act respecting conveyances," passed March 4, 1803, except that the time limited for registration was *twelve months*. This continued in force until December 7, 1811, when the time was reduced to three months, the other provisions of the section remaining unaltered. The act requiring a registration within three months, was in force until December 9, 1823. Several acts have been passed, extending the time for registering deeds, as follows:

December 20, 1820. Sec. 1. Any person or persons within this state, who have had deeds or conveyances of land executed to them, and have failed to have the same registered within the time prescribed by law, may within twelve months after the passage of this act, have the same registered in the manner the law prescribes, and a duly certified copy thereof shall be valid, and read in evidence in any court of law or equity in this state.

December 9, 1823. Sec. 1. Any person or persons in this state, who have had a deed or deeds of land executed to them, and have failed to have the same registered and recorded, within the time prescribed by law, may within six months after the passage of this act, have the same registered and recorded, in the manner prescribed by law, and a duly certified copy thereof shall be valid, and read in evidence, in any court of law or equity in this state: *Provided*, The original deed cannot be obtained: *And provided*, That this act shall not be

1826—(9) *Sec.* 2. Record destroyed, deeds may be recorded again in 18 months.

§ 20. All deeds and conveyances of lands, tenements, and hereditaments, the record of which may have been, or may hereafter be destroyed by any casualty, may again be entered of record within eighteen months thereafter.

1831—(3) *Sec.* 1. Deeds recorded at any time, to be valid thenceforth.

§ 21. All deeds which have been recorded, or shall hereafter be recorded, after the time limited by law, shall be considered and taken in law and equity, as valid and effective from the time of their registration; provided that registration as herein allowed, shall not affect the rights of creditors and purchasers, which have or shall have vested, in in law or equity, previous to such registration.

1803—(3) *Sec.* 9. Clerk of county court to record all deeds delivered to him.

§ 22. The clerk of the county court shall record in large well-bound books, of good paper, to be provided for that purpose, and carefully preserve, all deeds and conveyances of lands, tenements, and hereditaments lying and being in said county, acknowledged or proved, and certified to have been acknowledged or proved, in manner aforesaid, which shall be delivered to him to be recorded; to which books every person shall have access at proper seasons, and be entitled to transcripts from the same, on paying the fees allowed by law.

Ib. Sec. 10. Mode of making record.

§ 23. It shall be the duty of the clerk to record in the said book, without delay, every such deed or conveyance, with the acknowledgments, proofs, and certificates, written on or under the same, and the plats of surveys, schedules and other papers therein referred to and annexed, by entering them word for word in a fair hand, and mentioning in the margin, or at the foot of such record, the day of the month, and the year, when the said deed or conveyance was delivered to him, or brought to his office to be recorded.

Ib. Sec. 11. Clerk to give receipt, &c.

§ 24. The said clerk shall give a receipt to the person who shall bring any such deed or conveyance, mentioning therein the time it was delivered to him, or brought to his office to be recorded, the date, the names of the parties to it, and the place where the lands, tenements, and hereditaments therein specified, are situated: the said clerk shall certify on or under such deed or conveyance, the day of the month and year, when he received it, and the name or number of the book and page or pages, in which it is recorded; and shall, when recorded, deliver it to the party entitled to it, or his order.

Ib. Sec. 12. Penalty for neglect.

§ 25. If any clerk shall neglect or refuse to perform any service or duty required of him by this act, he shall for every neglect or refusal,

so construed, as to interfere with the legal rights of individuals who may have been concerned in the purchase of such lands.

January 9, 1826. Sec. 1. Any person or persons who may have failed to register his, her, or their deeds, grants, or other instruments of writing, required by law to be registered, within the terms prescribed by law, shall have the further time of twelve months to register the same: *Provided,* The said registration shall not operate to the prejudice of creditors or subsequent purchasers.

January 24, 1829. Sec. 1. Any person or persons within this state, who have had deeds, or conveyances of lands executed to them, and have failed to have the same registered, within the time prescribed by law, may, within twelve months after the passage of this act, have the same registered in the manner the law prescribes; and a duly certified copy thereof shall be valid, and read in evidence in any court of law or equity in this state.

January 10, 1831. Sec. 1. It shall be legal for any person or persons, who have failed to have deeds, which are required to be recorded, registered according to law, to have the same recorded at any time within eighteen months from the passage of this law.

January 18, 1832. Sec. 1. It shall be lawful for any person or persons who have failed to have deeds and conveyances of real or personal estate recorded within the time prescribed by law, to have the same recorded within one year after the passage of this act: *Provided,* That such registration shall not affect the rights of creditors and purchasers, which have heretofore vested.

forfeit and pay two hundred dollars; to be recovered with costs, by action of debt, to be brought in the name of the county treasurer, for the use of the county; and shall also be liable for all damages which the party aggrieved may have sustained by reason of the non-performance of such service or duty.

§ 26. If the original deed or conveyance be lost or mislaid, or be destroyed by time or accident, and not in the party's power to produce, the record of such deed or conveyance, and the transcript of such record, certified to be a true transcript, by the said clerk in whose office the record is kept, shall be received in evidence, in any court in this territory, and be as good and effectual, and available in law, as if the original deed or conveyance were then and there produced and proved.

Ib. Sec. 13. Certified transcript to be evidence when the original is lost.

§ 27. No record shall be removed by writ of subpœna, or otherwise, before any court out of the county in which such record is kept, when a transcript thereof may be given in evidence.

Ib. Sec. 17. Record not to be removed out of county.

§ 28. If any person shall forge any entry of the acknowledgments, certificates, or endorsements, whereby the freehold or inheritance of any man may be charged, he shall be liable to the penalties against forgers of false deeds. And if any person shall perjure himself in any of the cases hereinabove mentioned, he shall incur the like penalties, as if the oath or affirmation had been in any court of record.

Ib. Sec. 21. Forgery and perjury in relation to acknowledgments, &c.

§ 29. No estate of a *feme covert*, in any lands, tenements, or hereditaments, lying and being in this territory, shall pass by her deed or conveyance, without a previous acknowledgment made by her on a private examination, apart from her husband, before one of the territorial judges, or one of the justices of the county court,[1] that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband, and a certificate thereof, written on or under the said deed or conveyance, and signed by the officer before whom it was made; and every deed or conveyance so executed and acknowledged by a *feme covert*, and certified as aforesaid, shall release and bar her right of dower, and be good and effectual to convey the lands, tenements, and hereditaments thereby intended to be conveyed: *Provided*, That this clause shall not be construed to enable any *feme covert* under the age of twenty-one years, to convey lands, tenements, or hereditaments, or any right of dower, interest, or estate therein.

Ib. Sec. 3. Estate of married women.

Under 21, not to convey.

§ 30. It shall be lawful in such cases where deeds have been recorded and the *feme covert* hath not relinquished her right of dower in the same, for her to relinquish her right of the lands so deeded before any judge or justice of the quorum of this territory, or any judge or justice of any court, or notary public of any other state or territory; and such officer, having previously examined her as required by law, shall certify the same under his hand, which certificate shall be recorded in the court, where the deed or deeds may have been recorded, which shall be deemed sufficient.

1812—(13) *Sec.* 11. Wife may relinquish dower after deed is recorded.

§ 31. Every grant or conveyance of messuages, lands, tenements, and hereditaments, or of rent, or of reversion, or remainder of messuages, lands, tenements, and hereditaments, shall be good and effectual without attornment of the tenant; but no tenant who, before notice of such grant or conveyance, shall have paid the rent to the grantor, shall be prejudiced, or suffer any damage by such payment.

1803—(3) *Sec.* 18. Grant &c. effectual without attornment of tenant.

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[1] Relinquishments of dower may in general be made before the same officers that are authorized to take the probate of deeds.—See § 5, 10, 12, 13, 14, 15, 16, 17.

Ib. Sec. 19. Warranties.

§ 32. All warranties by any tenant for life, shall be void against those in remainder or reversion.

Ib. Sec. 20. What words shall amount to an express covenant.

§ 33. In all deeds to be recorded in pursuance of this act, whereby any estate of inheritance in fee simple, shall hereafter be limited to the grantor or his heirs, the words, grant, bargain, sell, shall be adjudged an express covenant to the grantee, his heirs and assigns, to wit: that the grantor was seized of an indefeasible estate in fee simple, freed from incumbrances, done or suffered from the grantor, (except the rents and services that may be reserved) as also for quiet enjoyment against the grantor, his heirs and assigns; unless limited in express words contained in such deed: and the grantee, his heirs, executors, administrators, and assigns, may in any action, assign breaches, as if such covenants were expressly inserted: *Provided always*, That this law shall not extend to leases at rack-rent, or to leases not exceeding one-and-twenty years, where the actual possession goes with the lease.

Ib. Sec. 22. Discharge of mortgage.

§ 34. Any mortgagee of any real or personal estate, in this territory, having received full satisfaction and payment of all such sum or sums of money as are really due to him by such mortgagor, shall, at the request of the mortgagor, enter satisfaction upon the margin of the record of such mortgage, recorded in the said office, which shall forever thereafter, discharge, defeat, and release the same; and shall likewise bar all actions brought, or to be brought thereupon. And if such mortgagee, by himself or his attorney, shall not within three months after request, and tender made for his reasonable charges, repair to the said office, and there make such acknowledgment as aforesaid, he or she neglecting so to do, shall for every such offence forfeit and pay unto the party or parties aggrieved, any sum not exceeding the mortgage money; to be recovered in any court of record, by bill, plaint, or information.

Penalty for not rendering satisfaction.

1812—(13) *Sec.* 5. Deeds to convey *fee simple*, if less estate be not expressly limited.

§ 35. Every estate in land, which shall be hereafter granted, conveyed, or devised, although words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple, if a less estate be not limited by express words.

Ib. Sec. 7. Contingent remainders to vest in posthumous heirs, without precedent particular estate.

§ 36. Where an estate hath been, or shall be by any conveyance, limited in remainder to the son or daughter, or to the use of the son or daughter, of any person, to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

Ib. Sec. 8. Deed, equivalent to feoffment with livery of seisin.

§ 37. In all cases by deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use, or by deed operating by way of covenant to stand seized to use, the possession of the bargainor, releasor, or covenantor, shall be deemed heretofore to have been, and hereafter to be transferred to the bargainee, releasee, or person entitled to the use of the estate, or interest which such person hath, or shall have, in the use, as perfectly as if such bargainee, releasee, or person entitled to the use had been *enfeoffed* with livery of seisin, of the land intended to be conveyed by the said deed or covenant.

Ib. Sec. 9. Curtesy and dower allowed in estates for use.

§ 38. Where any person to whose use, or in trust for whose benefit, another is or shall be seised of lands, tenements, or hereditaments, hath, or shall have such inheritance in the use, or trust, as that if it had been a legal right, the husband or wife of such person would thereof have been entitled to *curtesy* or *dower*, such husband or wife shall have and hold, and may by the remedy proper in similar cases, recover *curtesy* or *dower* of such lands, tenements, or hereditaments.

§ 39. Every estate in lands or slaves, which now is, or shall hereafter be created an estate in fee tail, shall from henceforth be an estate in fee simple, and the same shall be discharged of the conditions annexed thereto by the common law, restraining alienations before the *donee* shall have issue, so that the donee, or person in whom the conditional fee is vested, or shall vest, shall have the same power over the said estates, as if they were pure and absolute fees: *Provided*, That any person may make a conveyance or demise of lands, to a succession of donees then living, and the heir or heirs of the body of the remainder-man, and default thereof, to the right heirs of the donor in fee simple.

Ib. Sec. 10. Fee-tails in lands and slaves discharged of their condition.

Exception.

§ 40. Where any person owning lands or tenements, shall sell the same, and enter into bond or obligation to make titles thereto, and shall depart this life without having made titles, in that case, the person to whom such bond or obligation was given, his executors or administrators, may petition the orphans' court of the county where probate of the will of such deceased person was taken, or letters of administration granted, to compel the executors or administrators to make titles, agreeably to the bond or obligation given by the decedent; and it shall be the duty of such court to cause their clerk or register, to cause notice of such petition to be published in some newspaper in this territory, once a month for at least three months, when the court may, if they find that the said contract was fairly made, order the executor or administrator to make titles as such, to the lands or tenements sold by their testator or intestate; and any executor or administrator refusing to comply with such order, may by such court be imprisoned for the contempt, until they will comply with the order of such court: *Provided*, That any person dissatisfied with the sentence or order of the court, on any petition as aforesaid, may take an appeal to the superior court, as in other testamentary cases. (1)

1812—(17) *Sec.* 1. Orphans' court may enforce bond for titles, against executor or administrator.

Party dissatisfied may appeal.

GRANTS BY THE STATE.

§ 41. For the conveyance or transfer of the right of lands, town lots, or other real estate in fee simple, belonging to this state, to any person or persons, company, body politic, or corporation, a patent shall issue with the great seal of the state, signed by the governor, and attested by the secretary of state.

1821—(19) *Sec.* 1. To be by patent under the seal of the state.

§ 42. All purchasers of lands, town lots, or any real estate belonging to this state, their heirs, legal representatives, or assigns, may receive a patent for the same, upon his, her, or their producing to the secretary of state, a certificate or receipt signed by the treasurer of this state, that the said purchaser or purchasers, their heirs, legal representatives, or assigns, have satisfied or paid into the treasury of this state, the legal amount due for such land, town lot, or other real estate; and it shall be the duty of the governor, forthwith to issue a patent to the said purchaser or purchasers, their heirs, legal representatives or assigns, upon the production of the certificate or receipt as aforesaid.

Ib. Sec. 2. What evidence will authorize the issuance of a patent.

§ 43. It shall be the duty of the secretary of state, to record in a strong-bound book, to be kept for that purpose, all grants and patents,

Ib. Sec. 3. Patent to be recorded by

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(1) The orphans' court cannot compel the executor or administrator to make titles, unless the testator or intestate owned the land at the time he contracted to convey; nor unless his agreement was under seal.—Simpson's Administrator *v.* Simpson, *Min. Rep.* 33.

secretary of state. of whatever nature or kind soever, issued by this state, to any person or persons, company, body politic, or corporation.

Ib. Sec. 4. Secretary's fee. § 44. Any person receiving a grant as aforesaid, shall pay therefor, upon the receipt thereof, to the secretary of state, the sum of seventy-five cents.

NOTE.—For other provisions respecting the registration of deeds, &c., See "Frauds and Fraudulent Conveyances."

Purchasers of school lands, sold under any of the acts providing for the sale of the 16th sections, are entitled to receive a patent from the governor, on producing a certificate of full payment from the president and cashier of the Bank of the State of Alabama.—See "Schools and School Lands,"—§ 35.

CORONERS.

1833—(40) Coroner to hold inquests in certain cases. § 1. IT shall be the duty of every coroner, whenever any sudden death shall come to his knowledge, whether occurring by violence, casualty, or in prison, to summon forthwith a jury of six householders of the county, of known discretion, and proceed immediately to make diligent inquisition concerning the cause thereof, and all the material circumstances connected with such sudden death; for which purpose the coroner may summon witnesses, who shall attend and give testimony, under all the penalties provided against other witnesses summoned in behalf of the state: which inquisition so taken, shall be committed to writing, and returned to the next circuit court of the county. And if, after hearing the testimony, there shall be probable grounds to suspect any one of unlawfully causing the death in question, or of being concerned therein, the coroner shall issue a warrant for the apprehension of such person; or if he be escaped to another county, shall apply to some justice of the peace to issue the same; and such person, when so apprehended, shall be carried before a justice of the peace of the county where the death occurred, to be dealt with according to law. It shall also be the duty of the coroner, on the issuance of such warrant by himself, or the justice, to bind over all witnesses who have given material testimony, to attend the next circuit court; and shall return the recognizances of the witnesses, certified, with the inquisition. It shall moreover be lawful for the coroner, and it is made his duty, as often as circumstances may require it, to call to his aid the power of the county.

To issue warrants, when.

To recognize witnesses, &c.

When coroner shall act as sheriff or jailor. § 2. The coroner shall execute all process when the sheriff is a party in interest, to any suit in the circuit or county court, and perform all the duties of sheriff, whenever from any cause, he may be incompetent to act as such. He shall also be keeper of the jail when the sheriff is imprisoned upon any civil or criminal process; and for failing to perform any of the duties prescribed in this section, shall be liable to all the penalties prescribed against sheriffs and jailors for similar defaults.

Liabilities, &c.

Additional bond may be required. § 3. Whenever the coroner shall be required to discharge the duties of sheriff, agreeably to the laws now in force, the judge of the county court, may at his discretion, demand of such coroner, such additional bond, as he may deem necessary or advisable.

For failure to do as required by 1st section, how responsible. § 4. If any coroner shall fail to perform any of the duties required of him in the first section of this act, he shall be liable, together with his securities, to pay such damages, not less than two hundred dollars, as may be assessed by a jury, to be recovered on his official bond, by any one who will sue for the same; and in addition, shall be liable to be indicted and fined, not exceeding one hundred dollars.

§ 5. When there is no coroner in the county, or he cannot attend, any justice of the peace may perform his duties in making the inquisition as aforesaid; and for such services, shall receive the fees allowed to the coroner.

Where no coroner, justice to act, &c.

§ 6. The judges of the county courts shall have power to appoint a coroner, in cases where there shall be no coroner in said county, when it may become necessary for any process to be served on the sheriff.

Ib. Sec. 7. Judges of county courts to appoint coroners, when.

NOTE.—For the coroner's appointment and bond,—See "County Officers."

COTTON GINS AND GIN-HOLDERS.

§ 1. EVERY owner or possessor of any gin, erected in or within one quarter of a mile of any city, town, or village, is directed and required to enclose, remove, or destroy all the cotton seed which falls from said gin, so as to prevent the putrefaction thereof; and every person so neglecting, after having five days previous notice thereof, shall forfeit and pay for the use of the territory, twenty dollars, to be recovered before any justice of the peace, for every day he shall thus neglect to remove the cotton seed as aforesaid.

1809—(1) *Sec.* 2. Seed falling from cotton gins to be enclosed, &c.

Penalty.

§ 2. Every owner or holder of any cotton-gin within this territory, is hereby restrained from throwing, or letting the cotton seed fall from their gins into any stream of water, or watercourse whatever, except the Tombeckbee and Alabama rivers, and the waters of Bayou Sara: and every person failing to comply with the requisitions of this section, shall forfeit and pay the sum of two hundred dollars, recoverable before any court having jurisdiction thereof, one moiety to the use of the person suing for the same, and the other to the person or persons injured.

Ib. Sec. 3. Seed not to be thrown into any water-course, except Tombeckbee and Alabama.

§ 3. Every gin-holder within this territory, shall enclose his or her cotton-gin with a good and sufficient fence, five feet high, and so close that no hog of any size can get through the same; and every such gin shall be enclosed so as to include all the cotton seed which may fall from, or in anywise appertain to said gin: and every person or persons failing to comply with the requisitions of this act, shall forfeit and pay the sum of twenty dollars for every day they shall neglect or fail so to comply; to be sued for and recovered by the party injured, before any justice of the peace, and applied to his own use: *Provided*, That nothing in this act contained shall prevent any person or persons from recovering any special damages, he, she, or they may sustain, in consequence of any gin-holder negligently keeping his or her gin.(1)

1810—(1) *Sec.* 1. Gins to be enclosed.

§ 4. All owners of cotton-gins within this state, shall mark on each bale of cotton by them ginned and baled, the initial letters of their proper names, together with such initials as will designate the county of their residence.

1832—(16) *Sec.* 2. Initials of owner's name and of county to be marked on bale.

§ 5. If any person or persons shall violate the provisions of the foregoing section, he, she, or they shall be liable to a penalty of five dollars, to be recovered before any court having competent jurisdic-

Ib. Sec. 3. Penalty.

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(1) An action for the forfeiture, for failing to keep a cotton-gin enclosed, is barred if not instituted within one year after the forfeiture accrued. Johnson *v.* A. & J. E. Hughes, 1 *Stewt. Rep.* 263.

tion, one-half to be paid into the county treasury, and the other half to the person suing for the same.

NOTE.—For the penalty for exhibiting a false sample of cotton, or for plating or other fraud in the packing thereof—See "Crimes and Misdemeanors,"—§ 68, 69. For the law respecting cotton receipts—See "Notes, Bills, and Bonds,"—§ 1, 2.

COUNTIES.

Con. Ala. Art. 6. Sec. 16. New counties.

§ 1. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than nine hundred square miles; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of separate representation.

Ib. Sec. 17. Boundaries to be fixed in 1828.

§ 2. The general assembly shall, at their first session which may be holden in the year eighteen hundred and twenty-eight, or at the next succeeding session, arrange and designate boundaries for the several counties within the limits of this state, to which the Indian title shall have been extinguished, in such manner as they may deem expedient, which boundaries shall not be afterward altered, unless by the agreement of two-thirds of both branches of the general assembly; and, in all cases of ceded territory, acquired by the state, the general assembly may make such arrangements and designations of the boundaries of counties within such ceded territory, as they may deem expedient, which shall only be altered in like manner: *Provided*, That no county hereafter to be formed shall be of less extent than nine hundred square miles.

Proviso.

COUNTY BUILDINGS.

1807—(25) Court-house, jail, pillory, whipping-post, and stocks, to be erected in each county.

§ 1. There shall be erected and established in every county, in which public buildings are not already provided, a good and sufficient court-house, for the legal adjudication of causes; and a strong and efficient jail or prison, for the reception and confinement of debtors and criminals, well secured by timber, iron grates, bolts, and locks; and also a pillory, whipping-posts, and so many stocks as may be convenient for the punishment of offenders. And every jail so to be erected, shall consist of three apartments at least, one of which shall be appropriated to the reception of debtors.

Court-house and jail to be built under the direction of the justices of the county court.

§ 2. Every court-house and jail to be erected as aforesaid, shall be formed of such materials, and of such dimensions, and on such plans as shall be directed by the justices of the county court, or a majority of them, in each county, who are hereby authorized to plan and project the same; and to accept as a gift, or to purchase for the use of the county, so much ground in the towns where the courts may be ordered to sit, as they may judge convenient and necessary, whereon to build all or any of the structures aforesaid. Which purchase-money shall be defrayed by the proper county, and laid in the county estimates.

Justices of the county court to ap-

§ 3. The said justices, or a majority of them in every county, shall appoint two commissioners, of industry and knowledge sufficient to plan and carry into effect, by drawing the draft, superintending the foundation, and erecting and completing of every court-house, jail, pillory, whipping-posts, and stocks, respectively. And for the faithful discharge of their duty in this behalf, the said commissioners shall enter into bonds, in the sum of five hundred dollars, with sufficient sureties, to the justices of the county court, in trust for the county, well and truly to account with the said justices, as often as they may be thereunto required by them, for the disposition of all money, or other property by them received from time to time, from the said justices, or treasurer, or any other person, or by any means whatever, for the purpose of aiding or assisting in building the said court-house, jail, and other structures, in the county to which the commissioners may severally belong. And on default in the commissioners, for want of attention or competent knowledge to carry on the work with propriety, the said justices shall have power to discharge one or both of them, and place others in their stead; taking the same surety from them.

point two commissioners.

Commissioners to enter into bond.

Commissioners may be discharged.

§ 4. Every county, now or hereafter to be erected and laid off within the territory, shall defray all expenses that may attend the building, and keeping in good repair, within itself, of the court-house, jail, pillory, whipping-posts, and stocks, hereby ordered; and to this purpose, for the greater forwarding the business, the justices aforesaid are hereby authorized, to draw out of the hands of the treasurer of the county, any sums of money which he may have received, belonging to the county, not otherwise appropriated; and the said justices are hereby directed, to apply the same wholly to the purposes of building a jail and court-house, pillory, whipping-posts, and stocks. But in every county, a jail shall be first erected; and the treasurer and justices are to govern themselves accordingly.

Erection and repair of buildings to be at county charge.

Jail to be erected first.

§ 5. The justices of the county courts are hereby authorized to make all necessary allowances, for repairs done to the court-houses and jails of their respective counties, and the claims of persons summoned to guard criminals, on the sheriff's certificate, which shall be paid out of the county treasuries respectively: *Provided*, The sum so allowed by the county court shall not exceed one hundred dollars in any one year.

1815—(13) *Sec.* 3. County court to make allowance for repairs, &c.

§ 6. The sheriff of every county within this state, shall take charge of the court-house of his county; keep out intruders; have it cleaned; and observe the decays or any other injury that may be done to said court-house, or any other property attached to or near it, that may belong to said county, and make a report, at least once a year, to the county court: and the judge and commissioners of roads and revenue, are hereby empowered to make such appropriations out of the county treasury, as are necessary to be by the sheriff incurred, to carry this act into effect.

1822—(25) *Sec.* 1. Sheriff to take charge of court-house.

Judge, &c. may make appropriations for his expenses.

COUNTY OFFICERS.

§ 1. It shall be the duty of the county courts in each county, to make such allowance to the clerks and sheriffs of their several counties, for their public services rendered either in the superior or county court, as to said county court shall seem reasonable and just: *Provided*, The sum allowed shall not exceed fifty dollars per annum to any clerk or sheriff; also to allow to all constables the sum of *one dollar and fifty cents*[a] for each day they shall be necessarily attending the

1815—(5) *Sec.* 2. Allowance by county court, to clerks, sheriff, and constables.

[a 1829—(2) *Sec.* 3.]

superior court; which sums of money shall be paid out of the county treasury; and no clerk, sheriff, or constable, shall be entitled to receive any sum or sums of money out of the territorial treasury under any pretext whatever, for public services rendered after the passage of this act.

1819—(6) *Sec.* 36. Clerks and sheriffs shall keep their offices at the court-house.

§ 2. The clerks of the circuit and county courts, and sheriffs of the different counties in this state, shall keep their offices at the several court-houses or places of holding courts therein, or within one mile thereof.

1819—(14) *Sec.* 4. County court to recommend coroners, auctioneers, and notaries public.

§ 3. The justices of the county courts, or a majority of them, shall recommend to the governor a fit person to act as coroner, and also a proper number to act as auctioneers and notaries public: [and it shall be the duty of the governor to commission the persons so recommended:[1]] and the officers so commissioned shall respectively hold their offices for the term of three years from the dates of their commissions.[2]

Ib. Sec. 5. Coroners, &c. to give bond.

§ 4. The coroner, auctioneers, and notaries public respectively, shall, before they enter on the duties of their several offices, give bond with sufficient security, to be approved of by the chairman of the county court in the sum of two thousand dollars, payable to the governor and his successors in office, for the faithful performance of their respective duties.[3]

Ib. Sec. 6. County surveyor and treasurer.

§ 5. There shall be appointed in each county in this state, by the county courts thereof, a county surveyor and treasurer, who shall hold their offices for the term of three years.

Ib. Sec. 7. County treasurer to give bond.

§ 6. The county treasurer shall, before he enters on the duties of his office, enter into bond with good and sufficient security to the county court of the county for which he may be so appointed, in such sum as said court may direct, for the faithful accounting for and paying over the moneys which may come into his hands as county treasurer.

1820—(26) *Sec.* 1. Repealing foregoing act as to commission from the governor.

§ 7. So much of an act providing for the appointment of county officers passed on the seventeenth day of December, eighteen hundred and nineteen, as directs that county treasurers, county surveyors, coroners, auctioneers, assessors and tax-collectors, shall be commissioned by the governor, is hereby repealed.[a]

a *See* § 3.

Ib. Sec. 2. Chief Justice's certificate sufficient evidence.

§ 8. The certificate of the chief justice of the county court, that the treasurer, surveyor, coroner, auctioneer, assessor or tax-collector (as the case may be) who may have been elected, has given bond and security as such, agreeably to law, shall be sufficient evidence of such officer's right and authority to exercise and perform the duties of the office to which he may have been appointed.

1823—(33) *Sec.* 1. Four months absence vacates office of clerk, sheriff, &c.

§ 9. If any clerk, sheriff or other county officer, shall absent himself from the county he resides in, for the term of four months, the office he may hold shall be vacated.

Ib. Sec. 2. Judge of county court shall certify vacancy,

§ 10. Should any of the vacancies above contemplated occur, it is hereby made the duty of the judge of the county court, of the county in which such vacancy may occur, if within his knowledge, immediately to certify the same under his hand and seal to the person, officer, or tribunal appointed by law to fill the same; and if complaint shall at any time be made to him of any such vacancy, it is hereby made the duty of the said judge, to inquire into the same, and if found true, to certify as above.

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[1] Repealed in part—See 1st section of the following act.

[2] By an act passed January 14, 1821, the appointment of county officers was transferred from the county court to the judge of that court, together with the "Commissioners of Revenue and Roads,"—See 1st section under that head.

[3] For the amount of auctioneers' bonds in the several counties,—See "Auctioneers."

§ 11. When any such certificate shall be made, the proper person, officer, or tribunal, shall immediately fill such vacancy.

Ib. Sec. 3. and office be filled.

§ 12. It shall be lawful for clerks of the circuit courts, in the several counties of this state, and it shall be their duty, to take the official bonds of sheriffs, assessors and tax-collectors, and coroners, in all cases, where any judge of the county court shall be absent from the county, incapacitated from disease, or where the office of county judge may be vacant, within the time that any such bonds may be required to be taken by law.

1828—(45). *Sec.* 1. Clerk of circuit court may take the bond of county officers, where judge of county court is absent, &c.

§ 13. In all cases where any such official bond may be taken by the clerk of the circuit court, the particular incapacity which prevented such bond from being taken by the judge of the county court of the proper county, shall be recited in the condition thereof; and when so recited, the obligor or obligors, each and all of them, shall be forever estopped from denying any such recited incapacity of the judge of the county court, which may be in such condition contained.

Ib. Sec. 2. Judge's incapacity to be recited in the condition of the bond.

§ 14. It shall be the duty of every clerk of the circuit court, whenever he shall have taken any such official bond of a sheriff, assessor and tax-collector, or coroner, in pursuance of the provisions of this act, to endorse on said bond his certificate, under his hand and official seal, (if there be one, and if not, under his private seal) that the said bond was duly taken at his office, on the day the same shall bear date; and when so certified, the said clerk shall forthwith transmit the same to the clerk of the county court, whose duty it shall be to deposit the same in the file of his office; and every official bond so taken, shall have the same force and effect, and be subject to the same regulations, as now appertain to the official bonds of sheriffs, assessors, and tax-collectors, and coroners, when taken by the judge of the county courts.

Ib. Sec. 3. Clerk to certify the bond so taken, and transmit it to the clerk of the county court.

§ 15. The clerk of the circuit court, for performing the duties herein prescribed, shall receive the sum of two dollars for every bond so taken, to be paid by the sheriff, assessor and tax-collector, or coroner, as the case may be.

Ib. Sec. 4. Fee to clerk.

§ 16. All bonds of sheriffs, or other county officers, shall be recorded in the office of the clerk of the county court of the proper county, except the bonds of the judge of the county court, and clerk of the county court, which shall be recorded in the clerk's office of the circuit court, in a book to be kept for that purpose: and the record of any such bond, so recorded as aforesaid, may be proceeded on in the same manner as the original, under the certificate of the clerk, of its being a true copy, unless the court before whom any proceeding may be had, shall deem it necessary, for the purposes of justice, to require the original.

Ib. Sec. 6. Bonds of county officers, where to be recorded.

Certified copy, evidence.

Note.—Public officers generally, are liable, on the requisition of their securities, to execute new bonds, or be dismissed from office.—See "Securities."—§ 12 to 27.

CRIMES AND MISDEMEANORS.[1]

Con. Ala. Art. 6. *Sec.* 19. Penal code.

§ 1. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation, and not of vindictive justice.

Ib. Sec. 2. Treason defined.

§ 2. Treason against the state, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort.

1807—(6) *Sec.* 1. Murder.

§ 3. If any person or persons shall commit the crime of wilful murder, such person or persons, on being thereof convicted, shall suffer death.

Ib. Sce. 2. Petit treason.

§ 4. Every person, liable to be prosecuted for petit treason, or as accessory thereto, shall be indicted, proceeded against, and punished, as is directed in other kinds of wilful murder.

Ib. Sec. 4. Mayhem.

§ 5. If any person or persons, on purpose and of malice aforethought, shall unlawfully cut or bite off the ear or ears; or cut out or disable the tongue; put out an eye, while fighting or otherwise; slit the nose or lip; cut or bite off the nose or lip; or cut off or disable any limb or member of any person whatsoever, such person shall be deemed guilty of *mayhem;* and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, shall on conviction thereof, pay a fine not exceeding one thousand dollars, at the discretion of the jury trying such offender; and shall stand in the pillory two hours every day, not exceeeding three days.

Ib. Sec. 5. Assault with intent to commit murder, rape, or robbery.

§ 6. Every person who shall assault another with intent to commit murder, rape, or robbery, shall, on conviction thereof, be amerced in such sum, as shall be assessed against him or her, by the verdict of a jury, and imprisoned a term not exceeding one year; and shall also give sufficient security for good behavior, for the term of six months after the expiration of such imprisonment.

Ib. Sec. 6. Rape.

§ 7. Every person who shall commit the crime of rape, and be thereof convicted, shall suffer death.

Ib. Sec. 7. Stealing or selling free persons.

§ 8. If any person or persons, shall be guilty of stealing or selling any free person for a slave, knowing the said person so sold to be free, and shall be thereof lawfully convicted, the person or persons so convicted, shall suffer death.

Ib. Sec. 8. Arson.

§ 9. Every person who shall wilfully and maliciously burn any dwelling-house, cotton-house, or out-house, or building adjoining such dwelling-house, cotton-house, or store, shall be deemed guilty of arson, and upon conviction thereof shall suffer death.

Ib. Sec. 9. Burning out-house, &c.

§ 10. Every person who shall burn any out-house, barn, or stable, not adjoining some dwelling-house, or store, or shall burn any hovel, crib, cock, mow, or stack of hay, fodder, corn or grain, or shall be accessory to either of the said offences, before the fact, shall, upon conviction thereof, pay the damages that any person may sustain thereby; and shall suffer imprisonment, not exceeding six months.

Ib. Sec. 10. Robbery.

§ 11. Every person who shall commit the crime of robbery, and be thereof convicted, shall suffer death.

Ib. Sec. 11. Burglary.

§ 12. Every person who shall commit the crime of burglary, and be thereof convicted, shall suffer death.

Ib. Sec. 12. Accessories before the fact.

§ 13. If any person or persons, shall be accessory before the fact, to any wilful murder, rape, arson, robbery, or burglary; he, she, or they, so offending, shall, upon conviction thereof, suffer death.

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[1] The multiplicity of enactments on the subjects of duelling and gaming, suggested the propriety of their being arranged under separate heads.

Ib. Sec. 13. Accessories after the fact.

§ 14. If any person or persons, shall be accessory after the fact, to any wilful murder, rape, arson, robbery, or burglary; he, she, or they, so offending, shall, upon conviction thereof, be fined not exceeding five hundred dollars, at the discretion of the jury, and shall receive thirty-nine lashes on the bare back.

Ib. Sec. 14. Larceny of and above 20 dolls.

§ 15. Any person convicted of larceny, to the value of twenty dollars or upwards, or as accessory thereto, shall restore the goods and chattels so stolen, to the rightful owner or owners thereof; or shall pay to him, her, or them, the value of such goods or chattels, as shall not be restored; and moreover, shall receive thirty-nine lashes upon his or her bare back; and shall stand in the pillory, at the discretion of the court, so as not to exceed two hours in each day, for three days.

Ib. Sec. 15. Larceny under 20 dolls.

§ 16. If any person or persons, shall feloniously take, steal, and carry away, any goods or chattels, under the value of twenty dollars, or shall be accessory thereto, before the fact; he, she, or they, being thereof legally convicted, shall be deemed guilty of petit larceny; and shall restore the goods and chattels so stolen, to the owner or owners thereof, or pay the value thereof to such owner or owners, and shall receive any number of lashes, not exceeding thirty-nine.

Ib. Sec. 16. Robbery or larceny of bonds, notes, &c. [a. 1833—(18) *Sec* 1.]

§ 17. Robbery, or simple larceny of obligations or bonds; bills obligatory, or bills of exchange; promissory notes for the payment of money, or notes for the payment of any specific property; lottery tickets; paper bills of credit; bank notes or bills;[a] cotton receipts; certificates granted by or under the authority of this territory, or of the United States, or any of them; shall be punished in the same manner, both as to the principal and accessory, as robbery or simple larceny of goods and chattels.

Ib. Sec. 17. Receiving stolen goods, or harboring felon.

§ 18. If any person or persons, shall receive or buy any goods or chattels, that shall be feloniously taken or stolen from any other person, knowing the same to have been so taken or stolen; or shall receive, harbor, or conceal any felons or thieves, knowing them to be so; he, she, or they, being of either of the said offences legally convicted, shall restore the goods so received, or pay double the value thereof, and shall stand in the pillory two hours.

Ib. Sec. 18. Stealing slave.

§ 19. If any person or persons, shall steal any negro or mulatto slave whatsoever, out of or from the possession of the owner or overseer of such slave; the person or persons so offending, shall be, and are hereby declared to be, felons, and shall suffer death.

Ib. Sec. 19. Horse-stealing.

§ 20. If any person do feloniously take or steal any horse, mare, or gelding, foal or filly, ass or mule; the person so offending, shall restore the property so stolen, or pay the value thereof, which shall be adjudged by the jury trying such offender, to the owner or owners thereof, and be fined at the discretion of the jury in a sum not exceeding five hundred dollars; and shall moreover receive thirty-nine lashes on his or her bare back well laid on, and be branded on the face, or in the right hand, as the court shall think fit, with the letter T, and be imprisoned for a term not exceeding twelve months.

Ib. Sec. 20. Receiving stolen horses, &c.

§ 21. And forasmuch as felons are much encouraged to steal horses, because a great number of persons make a trade to receive and buy of such felons, the horses by them feloniously taken, and also do make it their business to conceal such offenders after the said fact, knowing such felonies to be by them committed: *Be it further enacted*, That if any person or persons shall receive or buy any horse, ass, or mule, that shall have been feloniously taken or stolen from any other person, knowing the same to have been stolen, or shall harbor or conceal any horse or mule-stealer, knowing him to have so offend-ed; such person shall be deemed and taken as an accessory to such felony, and being of either of the said offences legally convicted, by the testimony of one or more credible witness or witnesses, shall incur and suffer the punishment of fine, imprisonment, whipping and branding, as prescribed in the last section.

Ib. Sec. 21. Accessories in horse-stealing may be tried before conviction of the principal.

§ 22. If any such principal felon cannot be taken, so as to be prosecuted and convicted of any such offence, it shall and may be lawful to prosecute every such person or persons buying and receiving any such animal as aforesaid, stolen by any such principal felon, knowing the same to have been stolen; and on conviction thereof, such offender shall be punished in the same manner, as if the said principal felon had been previously tried and convicted.

Ib. Sec. 22. Stealing neat cattle, hogs, sheep, and goats.

§ 23. Every person who shall be convicted of stealing any neat cattle, hog, sheep, or goat; shall for every such animal so stolen, forfeit and pay to the owner the value thereof; and also a fine of twenty dollars to any person suing for the same, to be recovered in any court in this territory, having cognizance thereof; and moreover, the offender shall receive on his bare back, twenty-five lashes well laid on, for the first offence, and for every succeeding offence he shall receive on his bare back, thirty-nine lashes well laid on, and stand in the pillory two hours.

Ib. Sec. 25. Injuries to the freehold, and thefts of things belonging to it.

§ 24. If any person shall throw down or open any bars or gates, fence or fences, belonging to or enclosing lands not his own, or shall dig up or carry away, any roots, fruit, or plants, or shall cut down or carry away any cotton, corn, oats, or rye, standing, lying, or being on any land not his own; or shall take or carry away from any landing place, whereof he is not a proprietor or owner, any boat, watercraft, or goods or wares whatever, wherein he hath no interest, without the leave of some person who has interest therein, or shall wilfully injure any building not his own; he shall for each and every such offence, forfeit and pay to this territory a fine, not less than two nor more than twelve dollars; to be recovered upon complaint before any justice of the peace, in the county where the offence was committed, and shall be liable to answer in damages to the party injured.

Destroying, or defacing public buildings, &c.

If any person shall wilfully destroy, break or pull down, injure or deface any public building, monument, instrument of writing, or other instrument or machine, erected or set up by lawful authority, without being duly empowered so to do, the person so offending shall forfeit and pay for each offence, a fine not less than twelve dollars nor more than three hundred, to the use of this territory, to be recovered by information or indictment, in any court of record having cognizance of the same, and be further liable to answer in damages as aforesaid. And if any person, on being sentenced to pay any of the fines aforesaid, shall be unable to pay the same, the court passing sentence, may order such person to be publicly whipped, not exceeding thirty-nine stripes, or be imprisoned, not exceeding six months, and to find sureties for his good behavior, for the term of one year.

Duty of attorney general.

When any of the trespasses before named shall have been committed upon any buildings or other property of a particular county, it shall be the duty of the attorney general to institute an action, and prosecute for the damages the county may have thereby sustained.

How this section is to be construed.

And it is provided, That nothing in this section shall be construed to prevent the moving of any incumbrances which may be in the highway, under the order and direction of any person, who may be legally authorized to superintend the same, or to prevent any prosecution for a theft, where a theft is committed.

§ 25. If any person or persons shall forge or counterfeit, or cause or procure to be forged or counterfeited, or shall willingly act or assist in the forging or counterfeiting any gold or silver coin, which now is or hereafter may be passing, or in circulation in this territory; or shall falsely utter, pay, or offer, or tender in payment, any such forged or counterfeited coin, knowing the same to be forged or counterfeited; every person so offending, and being thereof convicted, shall suffer death.

Ib. Sec. 26. Counterfeiting the coin.

§ 26. If any person or persons shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceedings in any of the courts of this territory, by means whereof any judgment shall be reversed, made void, or not take effect; or if any person shall acknowledge, or procure to be acknowledged, in any of the courts aforesaid, any recognizance, bail, or judgment, in the name or names of any other person or persons, not privy or consenting to the same; every such person or persons, on conviction thereof, shall pay a fine not exceeding five hundred dollars, at the discretion of the jury; and may also, at the discretion of the court, receive thirty-nine lashes: *Provided nevertheless*, That this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys duly admitted for any person or persons, against whom any such judgment or judgments shall be had or given.

Ib. Sec. 28. Stealing, altering, and defacing records, whereby judgment is avoided.

Proviso.

§ 27. Every person who shall deface, alter, falsify, or embezzle any record, enrolment, or matter, or instrument recorded, or registry thereof, with intent to defraud, shall, upon conviction thereof, pay a fine, not exceeding one thousand dollars, at the discretion of the jury, and be imprisoned a term not exceeding two years.

Ib. Sec. 29. Altering record with intent to defraud.

§ 28. If any person or persons shall wilfully and corruptly commit perjury, or shall by any means procure any person to commit corrupt and wilful perjury, on his or her oath or affirmation, in any suit, controversy, matter, or cause depending in any of the courts of this territory, or in any deposition or affidavit taken or made pursuant to the laws of this territory; every person so offending, and being thereof convicted, shall pay a fine not exceeding three hundred dollars, at the discretion of the jury, and stand in the pillory two hours, and shall have thirty-nine lashes on the bare back, and be thereafter rendered incapable of giving testimony in any of the courts of this territory, until such time as the judgment against such offender be reversed.

Ib. Sec. 30. Perjury and subornation of perjury.

§ 29. If any person having knowledge of the actual commission of the crimes of wilful murder, rape, arson, robbery, burglary, or larceny, shall conceal, and not as soon as may be, disclose and make known the same, to some of the judges, or other person or persons in civil authority, within this territory; on conviction thereof, such person or persons shall be adjudged guilty of misprision of felony, and shall pay a fine, not exceeding three hundred dollars, at the discretion of the jury; and may also, at the discretion of the court, receive any number of lashes, not exceeding thirty-nine.

Ib. Sec. 33. Concealment of felony.

§ 30. If any person or persons, shall knowingly or wilfully obstruct, resist, or oppose any officer of this territory, in serving or attempting to serve or execute any mesne process, or warrant, or any rule, or order of any of the courts of this territory, or any other legal or judicial writ or process whatsoever; or shall assault, beat, or wound any officer, or other person duly authorized, in serving or executing any writ, rule, order, process, or warrant aforesaid; every person so knowingly and wilfully offending in the premises, shall, on conviction thereof, be imprisoned not exceeding six months, and

Ib. Sec. 34. Obstructing process.

fined, not exceeding two hundred dollars, at the discretion of the jury trying such offender.

Ib. Sec. 35.
Rescue.

§ 31. If any person or persons shall, by force, set at liberty, or rescue any person or persons, who shall be found guilty of any capital offence, or rescue any person convicted of any capital crime, going to execution, or during execution; every person so offending, and being thereof convicted, shall suffer death. And if any person or persons shall, by force, set at liberty or rescue any person or persons, who, before conviction, shall stand committed for any capital offence; or if any person or persons shall, by force, set at liberty or rescue any person committed for, or convicted of any other offence; every person so offending, shall, on conviction thereof, be fined not exceeding three hundred dollars, at the discretion of a jury; and be imprisoned not exceeding nine months.

Ib. Sec. 36.
Conveying to prisoner instruments for breaking prison.

§ 32. If any person or persons shall directly or indirectly, by any ways or means howsoever, without the knowledge or privity of the keeper, convey any instrument, tool, or other thing whatsoever, to any prisoner, or into any prison, whereby any prisoner might break the prison, or work himself or herself unlawfully out of the same; every person so offending, shall forfeit and pay such fine as by the direction of the court shall be imposed, not exceeding one hundred dollars, according to the nature of the cause of the prisoner's commitment; or suffer such corporal punishment, not exceeding forty stripes, as the court shall inflict. And if it shall so happen, that any prisoner shall make his or her escape, by means of any instrument, or tool, or other thing, conveyed without the knowledge and privity of the keeper; the person so conveying the same, shall be liable to pay all such sums of money, for which the prisoner stood committed, if on civil process; and shall also have inflicted upon him or her, all such punishment, to which the escaped prisoner would be liable, if a criminal, and had been convicted of the charge for which he or she had been committed; unless such prisoner would be liable to capital punishment; in which case, the person assisting in such escape, shall be punished by fine, imprisonment, whipping, pillory, or sitting on the gallows, with a rope about his or her neck; or any one or more of the said punishments, as the court having cognizance thereof, shall think proper to inflict.

Punishment, where the prisoner actually escapes.

Ib. Sec. 37.
Jailor suffering prisoner to escape.

§ 33. If any jailer or prison-keeper shall voluntarily suffer any prisoner committed unto him to escape, he shall suffer and undergo the like pains, punishments, and penalties, as the prisoner so escaping should, or ought by law, to have suffered and undergone, for the crime or crimes wherewith he stood charged, if he had been convicted thereof. And if any jailer, or prison-keeper shall, through negligence, suffer any prisoner accused of any crime, to escape, he shall pay such fine as the justices of the court, before whom he is convicted, shall in their discretion inflict, according to the nature of the offence, for which the escaped prisoner stood committed. *Provided nevertheless*, That if any person who may be committed for debt, shall violently escape from prison, without connivance of the sheriff or keeper, and the sheriff, jailer, or prison-keeper shall, within three months next after such escape, recover the prisoner so escaped, and re-commit him to prison; then the sheriff shall be liable to nothing further than the costs of such action or actions, as may have been commenced against him for such escape.[1]

Proviso, in case of debtors.

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[1] See "Escape."

Ib. Sec. 38.
Polygamy.

§ 34. If any person or persons, being married, shall again intermarry with any other person or persons, the former husband or wife being alive; he, she, or they so offending, shall, on conviction thereof, pay a fine not exceeding five hundred dollars, at the discretion of the jury, and be imprisoned a term not exceeding one year, and receive thirty-nine lashes on his or her bare back. *Provided nevertheless,* That this section shall not extend to any person or persons, whose husband or wife shall absent him or herself, one from the other, for the space of five years, the one of them not knowing the other to be living within that time; nor to any person or persons who shall be, at the time of such marriage, divorced by competent authority; or to any person or persons, whose former marriage shall have been declared or rendered void by sentence of competent authority; or to any person or persons, for or by reason of any former marriage had or made within the age of consent.

Proviso, in case of five years' separation, divorce, &c.

Ib. Sec. 45.
Other offences to be punished as at common law.

§ 35. Every other felony, misdemeanor, or offence whatsoever, not provided for by this, or some other act of the general assembly, shall be punished as heretofore by the common law. (1)

Ib. Sec. 50.

§ 36. The manner of inflicting the punishment of death, shall be by hanging the person convicted, by the neck, until dead.

Ib. Sec. 55.
Benefit of clergy.

§ 37. Sentence of death shall in no case be pronounced against any person or persons, convicted of either of the crimes hereinbefore mentioned, unless the punishment prescribed for the commission of such crimes, is declared to be death by this act; and all laws, customs, or usages relating to, or in any manner respecting the benefit of clergy, are hereby abrogated and made null, to all intents and purposes.

1807.—(18)
Sec. 6.
Reward for apprehending criminals.

§ 38. Whosoever shall apprehend and take one or more persons, guilty of burglary, or of stealing any horse or mule, or of robbing in any highway or road in this territory, and shall prosecute him or them, till he or they be convicted of any such offence, shall, for every such offender so convicted, receive, within one month after such conviction and demand thereof made, a warrant on the territorial treasury for the sum of fifty dollars, which demand shall be accompanied by a certificate to the auditor of public accounts, from the court before whom such felon or felons shall be convicted. And in case any dispute should arise between the persons so apprehending any of the said thieves or robbers, touching their right to the said reward, then such court shall, by their said certificate, direct and appoint the said reward to be paid in such shares and proportions as to them shall seem just and reasonable.

Ib. Sec. 7.
Testimony.

§ 39. The person or persons so apprehending any offender, shall be competent to give testimony on the trial of such offender.

Ib. Sec. 16.
Penalty for composition with offender.

§ 40. No informer or plaintiff, other than the party aggrieved, shall or may compound or agree with any person or persons, that shall offend, or that shall be surmised to offend any penal statute, for an offence committed, or pretended to be committed, but after answer made in court unto the information or suit, in that behalf exhibited or prosecuted; nor after answer, but by the order or consent of the court, in which the same information or suit shall be depending, on pain that whosoever shall offend in making composition, or other misdemeanor, contrary to the true intent and meaning of this provision, or shall by color or pretence of process, or without process, upon color or pretence of any matter of offence against any penal law, make any composition, or take any money, reward, or promise of reward, for himself or to the use of any other, without order or consent of the court aforesaid, and shall be thereof convicted, shall stand on the pillory for any time not exceeding six hours, and forever be disabled to pursue, or be plaintiff or informer in any suit or information, upon any statute popular or penal, and shall also forfeit and pay into the territorial treasury any sum not exceeding forty dollars.

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(1) In criminal cases, where not affected by statute, the common law of England is in force in this state, so far as is consistent with the spirit of our institutions: and although the common law punishment in some cases may be inapplicable, the offence may nevertheless be punished as a misdemeanor. The State *v.* Cawood et al., 2 *Stewt. Rep.* 360.

1811.—(8) *Sec.* 2. Marking or branding unmarked and unbranded horse, &c.

§ 41. If any person shall be convicted of having marked or branded, with his mark or brand, any unmarked, or unbranded horse, mare, colt, mule, ass, bull, cow, bullock, ox, steer, heifer, calf, hog, sheep, or goat, not being his or her own property, and without consent of the owner, the person so offending, shall forfeit and pay the sum of twenty dollars to the owner thereof, for every such animal so branded and marked, to be recovered by action of debt before any justice of the peace, or in any other court having cognizance thereof: *Provided nevertheless*, That if any person being in doubt as to the right of property, shall call in two of the neighbors next adjoining the range where such stock shall run, and in their presence, and with their approbation, mark *and* brand, or mark *or* brand, any such stock as aforesaid, he shall not be liable to the penalties contained in this section.

Ib. Sec. 3. Altering or defacing the mark or brand of any horse, &c.

§ 42. Every person who shall be convicted by indictment, of altering or defacing the mark or brand of any horse, mare, colt, mule, ass, bull, cow, ox, steer, bullock, heifer, calf, hog, sheep, or goat, not being his or her property, and without the consent of the owner, shall, for every such animal whose mark or brand shall have been so altered or defaced, forfeit and pay the value thereof, and also a fine of twenty dollars to the owner.

1812—(10) *Sec.* 2. Adultery and fornication.

§ 43. If any man and woman shall live together in adultery, or fornication, it shall be the duty of any justice of the peace of the county, in which said persons may live, if within their own knowledge, or upon information to them made on oath, that such man and woman do live in adultery, or fornication, to cause the said man and woman, or either of them, to be brought before him; and he shall bind them, or any one of them, over to appear at the next term of the superior court of their county, and the attorney-general shall prefer a bill of indictment against such person or persons, and upon conviction thereof, they shall pay a sum not less than one hundred dollars, to be assessed by a jury; which fines shall be paid into the county treasury of the county where the offence was committed, for county purposes.

Ib. Sec. 3. Aiding insurrection of slaves.

§ 44. If any free person shall be aiding and assisting, or in anywise concerned with any slave or slaves, in any actual or meditated rebellion or conspiracy against the laws, government, or people of this territory, or shall in any manner advise, plot, or consult with any slave or slaves, for the purpose of encouraging, exciting, aiding, or assisting any such insurrection or rebellion, or intended insurrection or rebellion, such free person so offending, and being thereof convicted, shall suffer death.

Ib. Sec. 6. Forgery.

§ 45. If any person or persons shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or shall willingly aid or assist in the false making, altering, forging, or counterfeiting, any letters patent, gift, grant, covenant, bond, writing obligatory, note of a bank of any one of the United States, or of any bank established by law in any one of the said states, or bank of any territory of the United States, or any bill, or order, or acceptance of such bill or order, cotton receipt, receipt for the payment of money, or other article of value, promissory note, bill of exchange or acceptance thereof, will, indenture, or deed, or any instrument of writing whatever, to secure the payment or delivery of money, or other article of value, or in discharge of any debt or demand, with intention to defraud any person or persons, or any corporation or body politic; or shall utter, put off, or offer, or cause to be uttered, put off, or offered in payment, exchange, pledge, or for sale, any such false, forged, altered, or counterfeited bond, writing obligatory, note of a bank of one of the United States, or of any bank established by law in any one of the said states, or bank of any territory of the United States, or any bill, or order, or acceptance of such bill or order, cotton receipt, or receipt for the payment of money, or other article of value, promissory note, bill of exchange or acceptance thereof, will, indenture, or deed, or any instrument of writing, or obligation whatever, to secure the payment or delivery of money, or other article of value, or in discharge of any debt or demand, with intention to defraud any person or persons, corporation, or body politic, knowing the same to be false, altered, forged, or counterfeited, and shall be thereof convicted, every such person shall suffer death.

1814—(14) *Sec.* 1. Manslaughter.

§ 46. Any person who shall commit the crime of manslaughter, and be thereof convicted, shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding twelve months; and the infliction of those punishments shall be at the discretion of the jury trying such offender, who may inflict one or both at their discretion.

1814—(17) *Sec.* 31. Pulling down advertisement.

§ 47. If any person shall wilfully pull down any advertisement which is required by law to be set up by any person or persons; he or she so offending, shall forfeit for the first offence, five dollars, and for every like offence thereafter, ten dollars, to be recovered before any justice of the quorum or of the peace, by any person suing for the same, which fine, when collected, shall be paid into the county treasury for county purposes.

1819—(18) *Sec.* 10. Harboring or concealing slave.

§ 48. Any person or persons being convicted of harboring or concealing any negro or negroes, belonging to any other person or persons whatsoever, or suffering the same to be done (with his consent and knowledge,) shall be fined in a sum not exceeding seven hundred dollars, and shall be imprisoned not less than one calendar month, nor exceeding six calendar months, and shall be liable in damages to the party injured, to be recovered by action on the case before any tribunal having competent jurisdiction.

1830—(6) *Sec.* 1. Betting on elections.

§ 49. Any person or persons who shall hereafter make any bet or wager of money, or any other valuable thing upon any election or elections in this state, shall be deemed guilty of a misdemeanor, and upon conviction thereof, upon indictment or presentment in the circuit court of the county in which such offence shall have been committed, shall be fined in a sum not exceeding fifty dollars, at the discretion of the jury by whom such offender is tried; which said fine shall be paid into the county treasury, and constitute a portion of the county revenue.

Ib. Sec. 2. Judges to charge grand juries.

§ 50. It shall be the duty of the judges of the circuit courts of this state, to give this act in charge to the grand jury of each and every county in their respective circuits.

1830—(10) *Sec.* 3 Penalty on managers, for betting on the election.

§ 51. If any sheriff, deputy sheriff, coroner, constable, or other person who may be concerned in holding, conducting, or managing any election, as officers, judges, clerks, or otherwise, shall wager or bet any money or thing of value upon the event of such election, such person or persons, so wagering or betting, shall be liable to indictment or presentment in the circuit court of the proper county, and upon being thereof convicted, shall be fined in such sum as may be assessed by the jury trying the cause, not less than fifty dollars; and if the person so convicted be a sheriff, coroner, or constable, he shall thereupon be impeached and removed from office.

1830—(17) *Sec.* 1. Issuing change bills under 3 dolls.

§ 52. If any person or persons, partnership, or association of individuals, shall sign, seal, or make any promissory note, bill of exchange either foreign or domestic, or order drawn upon any person or persons, bill single or penal, for a less sum than three dollars, and issue or put forth the same as a change bill, or to make it subserve the common purposes of money, he, she, or they so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, on presentment or indictment, shall be fined in a sum not less than fifty, nor more than two hundred dollars, at the discretion of the jury by which such offender or offenders may be tried.

Ib. Sec. 2. Passing or circulating change bill.

§ 53. If any person or persons shall pass off, circulate, or aid in the circulation of any such note or instrument of writing as specified in the first section of this act, he, she, or they so offending, shall be fined in a sum not less than five nor more than twenty dollars, at the discretion of the jury by which such offender or offenders may be tried; and he, she, or they, shall stand committed to the common jail of the county till the fine and costs are paid: *Provided*, That no person shall be liable to the penalty herein annexed, for receiving a change bill, unless he has been an inhabitant of the county ten days.

Ib. Sec. 3. Judges to give this act in charge.

§ 54. It shall be the duty of each and every judge of the circuit court of this state, to give the first section of this act in charge to the grand juries of the different counties in this state.

1832—(8) *Sec.* 13. Distributing or circulating seditious papers.

§ 55. Should any person distribute, circulate, or publish, or cause to be distributed, circulated, or published, any seditious papers, pamphlets, or writing, tending to produce conspiracy, or insurrection, or rebellion, among the slaves or colored population, such person, upon conviction thereof, shall suffer death.

FRAUDS.

1819—(11) *Sec.* 1. No person to take money for not bidding for lands.

§ 56. From and after the first day of January, one thousand eight hundred and twenty, it shall not be lawful for any person or persons, either directly or indirectly, or by any deceitful way or means whatsoever, to take or receive any money, or other thing of value from any person or persons, for not bidding for any of the public lands within this state.

Ib. Sec. 2. No person to bid off lands for another.

§ 57. If any person or persons shall bid off any of the public lands within this state, under an agreement previously entered into, to transfer the same, or any part thereof, for a premium or an advance to be paid therefor, and shall transfer the same, or any part thereof, in pursuance of such agreement, and shall take or receive any premium or reward, or other thing of value for so doing, he, she, or they shall be deemed guilty within the true intent and meaning of this act: *Provided nevertheless*, This act shall not be construed so as to extend to any agreement or contract, which may be made without intent to violate or evade the provisions of this act, whereby any person or persons shall be employed and furnished with funds to purchase lands for others.

Proviso—unless, &c.

Ib. Sec. 3. Contracts against this act, void.

§ 58. All contracts entered into for the payment of money, or for securing the payment thereof, or from which a benefit might accrue to the obligee or his assignee, for not bidding for any of the public lands within this state, or for giving a premium or reward for bidding off any of the public lands within this state, under a previous agreement to transfer the same, are hereby declared to be null and void, to all intents and purposes whatsoever.

§ 59. If any person or persons shall take or receive any money or other thing of value, directly or indirectly, or by any deceitful ways or means whatsoever, for the purpose of evading this act, for not bidding for any of the public lands within this state, or for bidding off any of the public lands within this state under an agreement previously entered into, to transfer the same, or any part thereof, as aforesaid, he, she, or they so offending, shall forfeit and pay for every such offence, double the value of the money or other things so taken or received as aforesaid, to be recovered by action of debt, or on the case, one-half to the use of him or them that will sue for the same, and the other half to be paid into the public treasury, for the use of the state.

Ib. Sec. 4. Penalty for taking premium or money for bidding or not bidding.

§ 60. If any person or persons shall violate the provisions of this act, he, she, or they shall be liable to be indicted, and upon conviction thereof, shall be fined in a sum not exceeding two thousand nor less than three hundred dollars, and be imprisoned for a term not less than three nor more than twelve months, at the discretion of the court before whom he, she, or they shall be tried.

Ib. Sec 5. Violators of this act may be indicted.

§ 61. This shall be deemed a remedial statute, and shall receive a liberal construction; and the circuit court shall have exclusive jurisdiction of all offences against this act.

Ib. Sec. 6. This act remedial.

§ 62. It shall be the duty of the grand jurors in the several counties in this state, when they believe an offence has been committed against the provisions of this act, to apply to the court which they are summoned to attend, to issue a subpœna or subpœnas returnable *instanter*, for witnesses to appear before them and give evidence in the same manner as witnesses now do, on bills of indictment, in such cases as it may be their duty to inquire.

Ib. Sec. 7. Grand jurors may procure witnesses.

§ 63. Nothing contained in this act shall be so construed, as to prevent any person, who has made improvements on the United States' lands, from having the right to sell his right to the same, and recover for such consideration.

Ib. Sec. 8. Improvements on U. S. land, may be sold.

§ 64. It shall be the duty of the judges of the several courts in this state, and justices of the peace, upon information by affidavit, to issue their warrant or warrants, to bring before them, or any other judge or justice having cognizance of the same, any person or persons who has violated any of the provisions of this act; and they are hereby directed and required, to bind any such offender or offenders to appear at the next circuit court to be holden for the county, in such sum as may be deemed proper, to answer the prosecution of the state, under such other regulations as are usual in criminal cases.

Ib. Sec. 9. Judges and justices may bind over offenders.

§ 65. The provisions of the above recited act,[1] shall be given in charge to the grand juries, by the judges at their respective circuit courts in this state.

1824—(1) *Sec.* 3. Judges to charge grand juries.

§ 66. In all cases whatsoever, where any suit or action shall be brought in any court of record in this state, touching or concerning any specialty, promise, or agreement, made in writing or otherwise, to pay money or any other thing, contrary to the provisions of the before-mentioned act, every person who may be a party, or concerned in any way in the same, shall be a good and lawful witness to give evidence of the consideration and execution of any such bond, specialty, promise, or agreement as aforesaid: *Provided however*, If any person against whom such evidence is offered to be given, will deny upon

Ib. Sec. 4. Party concerned may be witness in civil suits arising under the foregoing law.

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[1] The preceding act.

oath, to be administered in open court, the truth of what such witness offers to swear, then, and in every such case, other and additional testimony shall be required.

Ib. Sec. 5. Witness, or party forswearing himself, guilty of perjury.

§ 67. The circuit courts in this state, shall have jurisdiction of all offences in violation of, and contrary to the provisions of the act that this is intended to amend; and if any witness or party as aforesaid, shall forswear him or herself in any such matter, and be thereof lawfully convicted, he or she so convicted, shall suffer the pains and penalties by law inflicted on persons convicted of wilful and corrupt perjury.

1818—(9) *Sec.* 3. Exhibitng false sample of cotton.

§ 68. Any and every person or persons, who shall be guilty of furnishing or exhibiting any false sample of any baled cotton, by him, her, or them offered for sale, shall be liable to a penalty of one hundred dollars, to be recovered by action of debt in any court of record, in addition to such damages as may be sustained by the purchaser or purchasers of such cotton, so falsely represented; and the one-half of such penalty shall accrue to the use of the territory, and the other half to the use of the party who shall sue for the same.

Ib. Sec. 4. Fraud in baling cotton.

§ 69. Any person or persons who shall commit any fraud in the packing or baling of cotton, by placing good cotton on the outside of such bale, (commonly called plating,) when the interior part thereof is composed of inferior cotton, or by putting and mixing with the cotton contained in any bale, any other material or substance than ginned cotton, shall be liable to prosecution by indictment, and on conviction shall be fined in such sum as the jury trying the same may deem proper; and moreover, be imprisoned at the discretion of the court, not exceeding thirty days, besides double damages, to be recovered at the suit of the party aggrieved.

1833—(7) *Sec.* 5. Penalty for fraud in the packing or sale of brown sugar.

§ 70. Should any person or persons, his, her or their agent, be guilty of a fraud in the packing or sale of brown sugar, by mixing the same with sand or other matter or thing calculated to injure the value, quality, or sale thereof, he, she, or they so offending, shall be deemed and held in law guilty of a fraud, and upon indictment and conviction for the same, in any court in this state having jurisdiction thereof, shall, for every such offence, be subject to a fine of not less than one hundred, nor more than five hundred dollars, and be imprisoned not less than one nor more than three months, in the common jail of the county, in which such conviction may take place.

Ib. Sec. 6. Qui tam action by the party injured.

§ 71. Should any person or persons, hereafter be injured by the fraudulent packing or sale of brown sugar, as mentioned in the foregoing section of this act, he, she, or they so injured, his, her, or their attorney, shall have and be entitled to a *qui tam* action against the party so offending, in which action the damages shall never be less than five hundred nor more than two thousand dollars; one-half to go to the use of the party injured, and one-half to the use of the state.

Malicious Mischief.

1821—(29) *Sec.* 1. Injury to enclosure or boat.

§ 72. From and after the passage of this act, if any person or persons shall, unlawfully, wilfully, maliciously and secretly, break, throw down, or destroy any fence or enclosure, or break, cut, or carry away from its mooring or landing, or destroy any flat, boat, or other water craft belonging to any other person or persons, every person or persons so offending, shall on conviction of any of the aforesaid offences, by sufficient and satisfactory testimony in any circuit court having jurisdiction of the same, be fined in such sum as the jury trying the case may assess, not exceeding fourfold the value of the property injured or destroyed, which fine shall be paid as a recompense to the party aggrieved.

1826—(33) Sec. 1. Injury to cattle, crop, goods, or timber prepared for building.

§ 73. From and after the passage of this act, any person or persons who shall unlawfully, wilfully, and maliciously kill, wound, or disable any horse, mare, or gelding, colt or filly, jack, jinny, or mule, or any goat, sheep or cattle, or any hog, or live stock of any kind or description whatsoever, belonging to any other person or persons; or shall unlawfully, wilfully and maliciously burn, or otherwise destroy any ricks or stacks of hay, fodder, or grain in the sheaf, or shall unlawfully, wilfully and maliciously destroy or injure, so that the same shall be unfit for use, any cotton, corn, or other article or commodity of value, or any goods, wares, or merchandize, or any timbers or frame prepared for buildings belonging to any other person or persons, every person or persons so offending, shall on conviction of any of the aforesaid offences, by sufficient and satisfactory testimony, in any circuit court having jurisdiction of the same, be fined in such sum as the jury trying the same may assess, not exceeding fourfold the value of the property injured or destroyed, and imprisoned in the common jail of the county any length of time at the discretion of the jury trying the case, which fine shall be paid to the party injured: *Provided however*, That the jury may inflict one or both of the penalties prescribed in this act.

1826—(42) Sec. 1. Disfiguring horses, &c.

§ 74. If any person shall cut or burn off, or pull out the hair from the mane or tail of any horse, mare, colt, filly, jack, jennet, or mule, belonging to any other person, with intent to disfigure the said animal, or shall by any other means, with said intent, disfigure the same, every such person, and all others in any manner concerned therein, shall be considered as principals in such offence, and shall on conviction thereof, suffer the penalties which are prescribed in an act entitled "An act to repeal in part and amend an act for the punishment of malicious mischief," passed December 17, 1821.[a]

[a] *See* § 72.

CRIMES AND MISDEMEANORS BY PERSONS OF COLOR.

1807—(6) Sec. 60. Punishment of negroes and mulattoes.

§ 75. When any negro or mulatto whatsoever, shall be convicted of any offence not punishable with death by this act,[b] judgment of death shall not be given against him or her, upon such conviction, but he or she shall be burnt in the hand by the sheriff in open court, or suffer such other and corporal punishment as the court shall think fit to inflict, except where he or she once had the benefit of this act, and in those cases, such negro or mulatto shall suffer death.

[b] *See first act under this title.*

Ib. Sec. 61. False testimony.

§ 76. When any negro or mulatto shall be found, upon the proof made to any county or corporation of this territory, to have given false testimony, every such offender shall, without further trial, be ordered by the said court, to have one ear nailed to the pillory, and there stand for the space of one hour; and then the said ear to be cut off, and thereafter the other nailed in like manner, and cut off at the expiration of one other hour; and moreover, to receive thirty-nine lashes on his or her bare back, well laid on, at the public whipping-post, or such other punishment as the court shall think proper, not extending to life or limb; and at every such trial of slaves for capital offences, the person first named in the commission, then sitting, shall, before the examination of any negro or mulatto, charge such witness to declare the truth, which charge shall be in the words following, to wit: "You are brought hither as a witness, and by the direction of

Judge's charge to negro offered as a witness.

the law I am to tell you, before you give your evidence, that you must tell the truth, the whole truth, and nothing but the truth; and if it be found hereafter that you tell a lie, and give false testimony in this matter, you must for so doing, have both your ears nailed to the pillory and cut off, and receive thirty-nine lashes on your bare back, well laid on, at the common whipping-post."

1812—(10) *Sec.* 7. Rebellion. Assault and battery with intent to kill.

§ 77. If any slave or slaves shall at any time consult, advise, or conspire to rebel, or make insurrection against the white inhabitants of this territory, or against the laws and government thereof, or shall plot or conspire the murder of any white person, or shall commit an assault and battery on any white person with an intent to kill, every such slave or slaves, so consulting, advising, conspiring, or plotting, or committing such assault and battery, as aforesaid, with such intent to kill as aforesaid, being convicted thereof, shall suffer death.

1814—(2) *Sec.* 6. Certain crimes by slaves made capital.

§ 78. If any slave shall maim a free white person, or shall attempt to commit any other capital crime, or shall be voluntarily accessory before or after the fact, in any capital offence, or shall be guilty of the manslaughter of any free person, or shall be guilty of burning any dwelling-house, out-house, barn, or stable, or shall be accessory thereto, or shall be guilty of any crime made capital by law, or shall be accessory to any crime herein named, any such slave shall, on conviction, suffer death.

1826—(41) *Sec.* 1. Manslaughter committed on slave or free person of color.

§ 79. If any slave or free person of color, shall hereafter be tried and found guilty of the crime of manslaughter, committed on the body of any other slave or free person of color, such slave or free person of color, so offending, shall receive not less than thirty-nine, nor more than one hundred lashes, on his or her bare back, at the discretion of the jury trying the offence, to be inflicted by the sheriff of the county, in which said slave or free person of color shall be found guilty; and moreover, such slave or free person of color, shall be branded in the forehead with the letter M. (1)

1831—(7) *Sec.* 1. Attempt to commit rape on white female.

§ 80. If any slave, or free person of color, shall attempt to commit a rape on any free white female, such slave, or free person of color shall, on conviction, suffer death.

NOTE.—A few other offences of a less serious character, committed by persons of color, or *in relation to them*, will be found under the head of "Slaves and Free Persons of Color." It was found impossible to detach them from the general law on that subject, without leaving it imperfect, and to some extent unintelligible.

CRIMINAL LAW.

1. CONSTITUTIONAL PROVISIONS.

Con. Ala. Art. 1. *Sec.* 10. Rights of the accused in criminal cases.

§ 1. IN all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed: he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

(1) A slave may be punished by whipping and branding, when convicted of manslaughter on an indictment for murder. The State *v.* Peter, 1 *Stewt. Rep.* 38.

§ 2. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offence, and legally applied.

Ib. Sec. 11. No person accused, &c. except by law.

§ 3. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

Ib. Sec. 12. Indictable offences, how proceeded against.

§ 4. No person shall, for the same offence, be twice put in jeopardy of life or limb.

Ib. Sec. 13. No person twice tried.

§ 5. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Ib. Sec. 16. Bail, fines and punishments.

§ 6. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require it.

Ib. Sec. 17. Bailable offences. Habeas corpus.

§ 7. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

Ib. Sec. 20. Attaints.

§ 8. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name, and by the authority of the state of Alabama, and shall conclude "against the peace and dignity of the same."

Art. 5. *Sec.* 17. Style of process.

§ 9. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Art. 6. *Sec.* 2. Treason.

§ 10. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts under the direction of the courts.

Ib. Sec. 14. Prosecutions for libel.

2. Preliminary Proceedings by Justices of the Peace, &c.

§ 11. It shall be lawful for any one justice of the peace, upon complaint made before him upon oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place or places, to issue a warrant under his hand, commanding every such dwelling-house or place to be searched in the day-time; and the person knowingly concealing such stolen goods, or any part thereof, or in whose custody the same or any part thereof, shall be found, such person being privy thereto, shall be deemed guilty of a misdemeanor; and shall be brought before any justice of the peace for the county or place, and made amenable to answer for the same, by like warrant of any such justice, and on conviction shall be punished by fine and imprisonment, or whipping, as the court shall think fit to inflict, although the principal felon be not before convicted of the said felony, and whether such felon be amenable to justice or not.

1807—(18) *Sec.* 11. Justice may issue search-warrant.

Concealer of stolen goods, how punished.

§ 12. Justices of the peace shall have power and authority to take all manner of recognizances, with or without security, for good behavior, to keep the peace, or for appearance at the superior court, as the case may be, to answer to charges exhibited, or crimes committed in the view of such justices, or any of them, and whereof they have not

1814—(17) *Sec.* 20. Justices empowered to take recognizances, or commit to jail.

Recognizances, to be certified to court.

Also any forfeiture thereof.

competent power to hear and determine: and in case any person or persons shall refuse to enter into recognizance as aforesaid, and to find security when thereunto required, it shall and may be lawful for such justice or justices to commit the person so refusing to jail, there to remain until he shall comply with the order of such justice or justices; and all recognizances for the peace, good behavior, or appearance at any court, or for suspicion of any manner of crime, shall be certified before the superior court of the county to be holden next after the taking thereof, without concealing or detaining the same; and if any person shall forfeit his recognizance of the peace, good behavior, or appearance, the recognizance so forfeited, with the record of default, or cause of forfeiture, shall be sent and certified without delay, by such justice or justices, into such court.

Ib. Sec. 21. Justices to issue warrants against public offenders, and commit or bind them over.

Search-warrants.

Justice not to try right of property stolen, which, if contested, shall remain with the person in possession, unless he fail to give bond.

§ 13. Justices of the peace shall, by warrant under their hand and seal, cause any person charged on oath of having committed, or being suspected of, any felony or other crime or misdemeanor, to be apprehended and brought before him; to commit such person to jail[1] where the offence is not bailable, or where the offender is either unable or unwilling to give bail, to appear and answer to the crime alleged against him or her; to take the recognizance or recognizances of any person charged with any crime not punishable with death, with sufficient security, to appear at the next superior court of his or her county, and answer the charge; and the recognizance or recognizances of prosecutors and witnesses; and to issue search-warrants for stolen goods, on the oath of some credible person, particularly describing the place suspected, and intended to be searched: *Provided*, That in no case whatever, shall any justice of the quorum, or of the peace, try the right of any property alleged to have been stolen; but in all such cases, where the property so alleged to be stolen is claimed by two or more persons, the justice of the quorum, or of the peace, shall require of the person in whose possession the same was found, to give security for the forthcoming of the property at the next term of the superior court, to abide the judgment or decision of said court; and in case such person does not give the security required by this act, then the justice may deliver the property to any other person, upon their entering into the like bond and security.

Ib Sec. 22. Justices to take examination of offenders, and information of witnesses. To inform the prisoner that he may ask questions, &c. all which to be returned to court.

[a 1814—(6) § 3.] Penalty for neglect of duty.

§ 14. When any person charged with felony, breach of the peace, or other crime, shall be brought before any justice of the quorum, or of the peace, such justice shall immediately proceed to take the voluntary information of the accused in writing, and the information on oath of all witnesses that appear against him or her, touching the crime alleged to be committed; and it shall be the duty of said justice to inform the accused of his or her privilege, to ask any question he or she may think proper; which questions, with their answers, shall be reduced to writing by said justice, and it shall be the duty of said justice, to send up the recognizance or recognizances of the accused, the prosecutor, and of the witnesses, with the information of the accused and of the witnesses, to the next superior court of their county, before the sitting of the court, on the first day of the term;[a] and any justice failing so to do, shall be fined in any sum not exceeding fifty dollars, to be recovered on motion of the attorney-general, in the superior court, on three days previous notice of such motion.[2]

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[1] See "Prisons and Prisoners." § 7.

[2] The following section of an act passed February 7, 1807, although intended to be superseded by the above law, contains certain directory provisions, with regard to the examination of offenders, which render it important to be retained. The preceding sections of the act, conferring on justices of the peace,

Ib. Sec 23. If offender removes to another county, warrant may run, and be endorsed by another justice.

§ 15. When any person charged with any criminal offence, removes or escapes from the county where such offence is alleged to be committed, into another county, it shall be the duty of any justice of the county, to which such person may have removed or escaped, on proof of the hand-writing of any justice of the county where the offence was committed, to endorse any warrant issued by him, which shall be sufficient authority for arresting such offender, in any place within the jurisdiction of such justice, and such criminal shall be conveyed for examination, to some justice of the quorum, or of the peace within the county, where the offence is charged to have been committed; and subpœnas for witnesses may issue to any county on the part of the territory, where it is necessary for bringing an offender to justice, which shall be executed by some officer authorized to execute process in said county, where such witness may reside; and any justice of the county to which any offender may have removed or escaped, on the oath of any credible person, may arrest and have conveyed to the proper county for examination, any person charged with felony or other crime.

Subpœnas may issue to any county.

Any justice may issue warrant, and convey offender to proper county.

1832—(40) Sec. 1. Sheriff or coroner may take recognizances.

§ 16. When any sheriff, deputy sheriff, or coroner, shall execute a *capias* upon any person charged by indictment or presentment, with an offence against the laws of this state, and wherein bail before a justice of the peace, by law is allowed to be taken, such sheriff, deputy sheriff, or coroner, as the case may be, shall be authorized to take the recognizance of the defendant, and security or securities for his, her, or their appearance at court, to answer to the charge against him, which recognizances shall by the officer taking them, be returned to the proper court, certified in the same manner, and shall have the same effect, as if taken before a justice of the peace, or judge; and the sheriff, deputy sheriff, or coroner, taking the same, shall receive the same compensation which is allowed justices of the peace for like services, and shall be liable to the same penalties for failing to return the same to court.

3. Felons at large and Fugitives.

1818—(15) Sec. 1. Governor authorized to offer reward.

§ 17. The governor is hereby authorized, by proclamation, to offer a reward not exceeding four hundred dollars, for the apprehension of any person who may be charged with any capital offence, and may have escaped from prison, or the custody of a legal officer, or who may have eluded arrest by flight or otherwise.

Ib. Sec. 2. Draw on treasurer.

§ 18. The governor shall be authorized to draw on the territorial treasurer for any amount which may become due to any person or persons, in conformity to the provisions of this act.

1814—(15) Sec. 1. Fugitives from other states to be arrested and delivered up on demand of the executive thereof.

§ 19. When the executive authority of any of the United States or territories thereof, shall demand any person as a fugitive from justice, of the executive authority of this territory, and shall moreover pro-

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similar powers to those given by the act of 1814, are clearly and totally superseded.

"Sec. 4. It shall be the duty of the justice of the peace, when taking the information of witnesses as aforesaid, *and likewise of the coroner when taking an inquisition in a case of murder or manslaughter,* to inform the party accused, if he should be then in custody, that he will be permitted to ask the witness any proper questions; and such justice or coroner shall commit the same to writing, together with the answers, and shall read over the information given by such witness, to the said witnesses, and correct the same, if necessary, by making such additions thereto, as the witnesses may respectively require, before he shall certify the same."

duce a copy of an indictment found, or an affidavit made before a magistrate of any of the United States, or territories as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic, by the governor or chief magistrate of the state or territory from which the person so charged fled: it shall be the duty of the executive authority of this territory, to cause such person so demanded, if found within the territory, to be arrested and secured, and notice of the arrest to be given to the executive making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear, upon the condition that said agent shall pay all legal costs which may accrue in apprehending and imprisoning such fugitive, and the said agent shall be empowered to transport him or her to the state or territory from which he or she shall have fled: *Provided*, That if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged.

Ib. Sec. 2. Executive of this state empowered to demand fugitives.

§ 20. The executive authority of this territory shall have power and authority to demand and receive any person as a fugitive from justice, of the executive authority of any of the United States, or the other territories thereof, to which such person shall have fled, in the same manner and under the same rules and regulations as prescribed by the foregoing section.

4. Indictments, Presentments, and Actions Popular.

1814—(6) *Sec.* 3. Indictments preferred within first three days.

§ 21. It shall be the duty of the attorneys general respectively, to prefer all indictments, within the first three days of the terms of each of the superior courts.

1807—(6) *Sec.* 31. What averments are sufficient in an indictment for perjury.

§ 22. In all prosecutions against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom, the oath or affirmation was taken, averring such court, person, or persons, to have competent authority to administer the same, together with a proper averment or averments, to falsify the matter or matters, wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court; or the commission or authority of the person or persons before whom the perjury was committed.

Ib Sec. 32. What, in indictment for subornation of perjury.

§ 23. In all prosecutions for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, or declaration, or any part of the record or proceeding, either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed.

Ib. Sec. 46. In prosecution for libel, its truth may be given in evidence.

§ 24. If any person or persons shall be prosecuted by information or indictment, for the writing or publishing any libel, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel; and the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

Ib. Sec. 47. Privileges of the accused.

§ 25. Any person who shall be indicted for any capital crime, shall have a copy of the indictment, and a list of the jury which are to pass on his or her trial, delivered unto him or her, at least two entire days before he or she shall be tried for the same: (1) and every person accused and indicted, shall be allowed and admitted to make his full defence by counsel learned in the law. And the court before whom such person shall be tried, or some judge thereof, shall immediately upon his or her request, assign to such person, such counsel, not exceeding two, as such person shall desire, to whom such counsel shall have free access at all seasonable hours. And every such person or persons, so accused and indicted, shall be admitted in his, her, or their defence, to make any proof he, she, or they can produce by lawful witness or witnesses; and shall have the like process to compel his, her, or their witnesses to appear on his, her, or their trial, as is usually granted to compel witnesses to appear on the prosecution against him, her, or them.

1818—(4) *Sec.* 2. Talesmen not disqualified by the preceding section.

§ 26. So much of an act entitled "An act for the punishment of crimes and misdemeanors,"[a] as requires that the prisoner should be furnished with a list of the jury who are to pass on his trial, two entire days previous to such trial, shall be so construed, as not to disqualify any person who may be summoned as a talisman, in case of a deficiency of jurors of the panel, with a copy of which such prisoner may have been served.

[a] *See* § 25.

1807—(6) *Sec.* 48. If defendant stands mute on arraignment, the court to enter plea of *not guilty.*

§ 27. If any person, on his or her arraignment for any capital or inferior offence, shall stand mute, or will not answer to the indictment, the plea of *not guilty* shall be entered for him or her on the record, and the court shall, in either of the said cases, proceed to trial of the person standing mute, as if he or she had pleaded not guilty, and, for trial, put him or herself upon the country; and render judgment accordingly.

1807—(18) *Sec.* 8. Poisoning, &c. in one county, and death in another.

§ 28. When any person shall be feloniously stricken or poisoned in one county, and shall die of the same stroke or poisoning in another county, then an indictment thereof found by jurors of the county or district where the death shall happen, whether it be found before the coroner or justice upon the sight of such dead body, or before any court having authority to inquire of such offences, shall be as good and effectual in law, as if the stroke or poisoning had been committed and done in the same county where the party died, or where such indictment was found.

Ib. Sec. 9. Poisoning, &c. in the territory, and death out of it, and *vice versa.*

§ 29. When any person shall be feloniously stricken or poisoned at any place out of this territory, and shall die of the same stroke or poisoning within this territory; or when any person shall be feloniously stricken or poisoned at any place within this territory, and shall die of the same stroke or poisoning at any place out of this territory, an indictment thereof found by the jurors of the county or district, in which such death, stroke, or poisoning, shall happen respectively as aforesaid, whether before the coroner or justice upon a view of the dead body, or before any court having authority to inquire of murders, shall be as good and effectual in law, against the principals and accessories, as if such felonious stroke and death, or poisoning and death, and the offence of such accessories, had happened in the same county where such indictment shall be found: and the circuit or superior court holden in such county, shall and may proceed upon the same in all points, as they might or ought to do, in case such stroke, poisoning, or death, had happened in the same county, where such indictment shall be found.

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(1) In computing the time of delivering the list of the jury, the day of delivery and day of trial must both be excluded. The State *v* M'Lendon. 1 *Stewt. Rep.* 195.

Ib. Sec. 16. Stealing property out of the territory, and keeping possession of it within.

§ 30. Any person or persons who shall steal, or otherwise feloniously take any horse, or other goods and chattels, from any person, in any place out of this territory, and shall afterwards have the same, or any part of such goods and chattels, in his or their possession within this territory, may be indicted for horse-stealing or other larceny, in whatever county he or they may be so found with such horse, or other goods and chattels as aforesaid; and any receiver of stolen property, knowing the same to have been stolen, may be indicted in any county in which he shall have such stolen property in his possession, although the same may have been originally taken beyond the limits of this territory.

Ib. Sec. 12. Receiver of stolen goods may be punished, although principal felon be not convicted.

§ 31. *And whereas* it sometimes happens that the buyers and receivers of stolen goods convey away and conceal the principal felon, so that they cannot be convicted of such felony, and thereby such buyers and receivers escape all manner of punishment, which has greatly encouraged the buying and receiving of such stolen goods: *Be it therefore enacted*, That it shall and may be lawful to prosecute and punish every such person and persons, buying or receiving any stolen goods, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, although the principal offender cannot be taken, or be not convicted of the said felony, which shall exempt the offender from being punished as accessory, if the principal shall be afterward convicted.

Ib. Sec. 15. Legal error not to bar trial.

§ 32. No person accused of any criminal offence, shall be set at liberty and absolutely discharged before his trial, on account of any mere irregularity or informality in the warrant of commitment, nor after conviction, on account of any legal error or imperfection in his indictment; but the same proceedings shall be had again, as though he had never been arraigned: nor shall the words "force and arms," or the words "against the peace,"[1] or the words "contrary to the form of the statute," be regarded as necessary in any indictment or information for any trespass, or any other offence whatsoever, nor shall the parties indicted have any advantage by writ of error, or plea, or otherwise, for the want of these or the like words; but such indictments and informations shall be judged as effectual to all intents and purposes, as indictments and informations having the same words in them.

Ib. Sec. 17. Collusion in actions popular.

§ 33. If any person hereafter sue with good faith any action popular, and any defendant in the same action plead any manner of recovery by action popular, in bar of the said action, or that he before time barred any plaintiff in any action popular: then the plaintiff in the action taken with good faith, may aver that the said recovery was had by collusion, or that the said plaintiff was barred by collusion: and if such collusion be lawfully found, the plaintiff who shall sue with good faith, shall have recovery according to the nature of the action, and execution upon the same, in like manner and effect, as if no such action aforesaid had been had: *Provided always*, That no plaintiff shall be permitted to aver any collusion in any action popular, where the point of the same action, or else the collusion, has been once tried or lawfully found with the plaintiff or against him, by trial of twelve men, and not otherwise.

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[1] But, see Constitution of Alabama, Art. 5, Sec. 17.

§ 34. Hereafter it shall be lawful to try offenders, by indictment, in all cases which are now required by law to be tried on presentment.

1820—(28) Sec. 11. Offenders to be tried on indictment.

§ 35. Hereafter, in all cases of misdemeanor, where the grand jurors of this state are bound to present the offender or offenders, the said grand jurors shall not be bound to make presentment of any offender or offenders, on the knowledge of any one or more of their body only, unless twelve of the number of any grand jury shall agree in opinion, that the public good requires that the offender or offenders should be prosecuted: *Provided*, That nothing herein shall prevent any individual from prosecuting and preferring a bill before any grand jury, as now allowed by law, in which cases grand juries shall be governed in their finding by the facts of the case, as heretofore.

1827—(24) Sec. 1. Grand jury vested with a discretion in presenting for misdemeanors.

Proviso.

§ 36. It shall be the duty of the judges of the circuit courts throughout the state to give this act in charge to the grand juries.

Ib. Sec. 2. Judge to charge juries accordingly.

5. Change of Venue.

§ 37. It shall be lawful for the judges of the circuit courts, respectively, to grant to any person charged with a criminal offence, a change of venue for sufficient cause shown at any time, either at the first trial term, or if the case should be continued, or a new trial had after conviction, at any subsequent term: *Provided*, That no change of venue shall be allowed more than once.[1]

1821—(35) Sec. 1. Change of venue may be allowed at any time before trial, or after new trial granted.

6. Bail.

§ 38. All recognizances hereafter taken for any breach of the peace, for the prosecution of offenders against the laws, or in any case whatsoever, where a recognizance may be necessary, shall be made payable to the governor, for the time being, and his successors in office.

1807—(6) Sec. 54. Recognizances, to whom payable.

§ 39. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great, by any justice of the peace, before whom the offender may be brought, before commitment, and by any one of the territorial judges afterward.

1807—(18) Sec. 1. What offences bailable, and by whom.

§ 40. No defendant shall hereafter be bailed in a capital case, for a failure of obtaining a jury for his or her trial.

1831—(2) Sec. 3. No bail for failure of jury.

Note.—When defendant is entitled to be bailed for failure of trial,—See "Prisons and Prisoners,"—§ 26.

7. Scire Facias.

§ 41. On bonds or recognizances forfeited, it shall be sufficient for the clerk to issue a notice in the nature of a *scire facias*, reciting the bond or recognizance, and state that the same is forfeited, and that unless he, she, or they appear at the next term of the court, and show cause to the contrary, judgment will be entered against him, her or them; and where judgment *nisi* has been entered against any person, it shall be sufficient to recite the judgment *nisi* and the term of the

1833—(13) Sec. 1. What sufficient sci. fa. on forfeited bonds, &c.

On judgments nisi.

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[1] In criminal prosecutions the right to a change of venue is confined to the party prosecuted, and shall be made to the nearest adjoining county which is free from the like exception.—See "Judicial Proceedings at Common Law—Venue,"—§ 149.

court at which it was rendered, and conclude by stating that unless he, she, or they appear at the next term of the court and show cause to the contrary, judgment final will be entered up; which notice shall be held sufficient in law to entitle the state to a recovery, though the citation be to no particular day of the term, and although the notice does not specify the day or before whom the judgment was rendered; nor shall any averment or statement be necessary to the validity of the notice aforesaid, beyond the express terms of this act.

Ib. Sec. 2. No variance fatal unless substantial.

§ 42. In setting out a copy of the bond or recognizance, or judgment *nisi*, a variance shall not vitiate the proceedings unless it be a substantial variance.

Ib. Sec. 3. Sheriff to serve notice, and one service sufficient.

§ 43. Notices or *scire facias* shall be directed to the sheriff, and a copy shall be served on each by the sheriff; and one service on each defendant in said notice or *scire facias*, shall be sufficient to enable the state to recover.

Ib. Sec. 4. Bonds, &c. good, made either to the state or governor.

§ 44. All bonds or recognizances entered into as aforesaid, may be made payable to the state of Alabama: *Provided always*, That nothing in this section shall be so construed as to prevent the proper officer from making such bond payable to the governor and his successors in office.

Ib Sec. 5. Circuit courts may excuse in cases of forfeiture, on payment of costs only.

§ 45. The circuit courts are hereby authorized and required to determine upon all excuses in criminal cases for forfeitures under this act; and to excuse the party in default, on such terms as the court may impose, in no case extending beyond the payment of costs, where the party is excused.

8. LIMITATION OF PROSECUTIONS.

1807—(6) *Sec* 49. General limitation of one year, except murder, arson, forgery, counterfeiting, and larceny.

§ 46. No person or persons shall be prosecuted, tried, or punished for any offence, wilful murder, arson, forgery, counterfeiting, and larceny excepted, unless the indictment, presentment, or information for the same, be found or exhibited within one year, next after the offence shall be done or committed. Nor shall any person be prosecuted for any fine or forfeiture under a penal statute, unless the prosecution for the same shall be instituted within twelve months from the time of incurring the fine or forfeiture aforesaid: *Provided*, That nothing herein contained shall extend to any person or persons absconding or fleeing from justice.

1822—(12) *Sec.* 1. Polygamy, perjury, and subornation of perjury, indictable within five years. *Ib. Sec.* 2.

§ 47. So much of the statute of limitations as prevents prosecutions for polygamy, perjury, and subornation of perjury, unless commenced within a year after the time of the alleged offence, is hereby repealed.

§ 48. The prosecutions for the aforesaid offences, shall be commenced within five years, and not thereafter, after the commission of the alleged offence.

1826—(21) *Sec* 3. Assaults, and assaults and batteries, within six months.

§ 49. No person or persons shall be indicted for any assault, or assault and battery, after the expiration of six months from the commission of the offence, unless he, she, or they thus offending, shall have been recognized within that time to appear at some court having cognizance of said offence, except always such person or persons as may have fled from justice.

9. SELECTION OF THE JURY, AND CHALLENGES.

1831—(2) *Sec.* 1. Juror's incompetency

§ 50. In the selection of a jury for the trial of a person charged with the commission of a capital crime, it shall be the duty of the court, after the juror is sworn to make true answers to such questions as may be demanded of him by the court, to ask the juror if he has formed and expressed an opinion as to the guilt or innocence of the prisoner at the bar. If the juror answers that he has formed and expressed an opinion, then the court shall demand of him, whether the opinion he has so formed and expressed, is formed upon his own knowledge of the facts, or upon rumor. If he answer that the opinion so formed and expressed, is formed upon his own knowledge of the facts, then he shall be rejected: but if he answer, that his opinion so formed and expressed, is formed upon rumor, then he shall be sworn in chief, unless challenged by the prisoner or prosecuting officer.

for preconceived opinion, how tested.

§ 51. In all capital cases, the attorney for the state shall have the right to four peremptory challenges of the jury.

Ib. Sec. 2. State's challenges in capital cases.

§ 52. It shall not be lawful for any defendant, on trial for any offence made capital by law, committed after the passage of this act, to challenge more than sixteen jurors, without showing good and lawful cause for such challenge.

Ib. Sec. 4. Defendant's challenges in capital cases.

§ 53. In the trial of any person charged with any felonious offence not capital, twelve peremptory challenges shall be allowed the prisoner, and four to the state.

Ib. Sec. 5. In felonies not capital, defendant 12, and state 4 challenges.

10. Costs and Restitution.

§ 54. The lands, tenements, goods and chattels, of any person or persons convicted of any crime or misdemeanor, shall be liable and subject in preference to all other demands whatever, (except dower and jointure) in the first place to the discharge of the expenses incurred by the territory or county, in the prosecution and conviction of such offender; and in the next place, to what restitution or reparation may be adjudged to the injured party; and if the estate of the person or persons shall be incompetent to the said purposes, then in that case, after deducting the expenses of prosecution and conviction as aforesaid, the surplus, if any, shall go towards making reparation to the party injured.

1807—(6) *Sec.* 51. Lands or goods of persons convicted, liable for costs and restitution.

§ 55. It shall be the duty of the attorney general, to mark on all bills of indictment the name of the prosecutor; and if the territory shall fail in the prosecution, it shall be the duty of the court (either with or without a motion to that effect[a]) if the prosecution appear frivolous or malicious, to order the prosecutor to pay costs.

1811—(8) *Sec.* 1. In certain cases, prosecutor to be taxed with the costs.

[a 1826—(21) *Sec.* 2.]

11. Trial of Persons of Color.

§ 56. No person having interest in a slave, shall sit upon the trial of such slave.

1807—(6) *Sec.* 58.

§ 57. And for a declaration of what shall be deemed legal evidence in such cases, *Be it further enacted*, That the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes or mulattoes, bond or free, with pregnant circumstances, as to them shall seem convincing.

Ib. Sec. 59. Evidence admissible.

§ 58. Any slave may be tried for any offence not capital, by any justice of the peace on warrant, and may be sentenced to receive any number of stripes not exceeding one hundred, which sentence shall be executed by the constable: *Provided however*, That no slave

1814 (2) *Sec.* 1. Slaves may be tried by justices of the peace for offences not capital.

Number of lashes.

Justice to summon witnesses.

shall be sentenced to receive more than thirty-nine lashes, unless two respectable slave-holders to be summoned by the justice for the purpose of trying said slave, concur with him in the sentence; and any such justice of the peace shall summon and compel the attendance of all witnesses necessary to establish any fact for or against such slave, and shall duly examine such witnesses.

1824—(25) Sec. 1.

§ 59. All slaves which may be hereafter executed in pursuance of law shall be paid for in the manner hereinafter provided.

Jury convicting slave to assess his value. *Ib. Sec.* 2.

One half of the amount assessed to be paid to owner. [a *But see* § 64.]

§ 60. Whenever, on the trial of any slave for a capital offence, the jury shall return a verdict of guilty, the presiding judge shall have the same jury sworn to assess the value of said slave, and the verdict of said jury, shall be entered on the records of the court; and the master or owner of such slave producing to the comptroller of public accounts, a transcript from the record of the court regularly certified by the clerk, and the certificate of the sheriff, that any slave has been executed in pursuance of the sentence of the court, shall be entitled to receive a warrant on the treasurer for one-half of the amount assessed by the jury, to be paid out of the fund hereinafter provided for that purpose.[a]

Ib. Sec. 3. Tax on negroes to raise a fund for this purpose.

§ 61. To raise a fund for the purpose aforesaid, it shall be the duty of the assessors annually to assess a tax of one cent on all negroes under ten years, and two cents on all negroes over ten and under sixty; and it shall be the duty of the tax-collectors to collect and return the same at the same time, and in the same manner, they are now compelled by law to collect and return the state tax; and it shall be the duty of the treasurer to keep said fund separate and distinct from the revenue of the state.

Ib. Sec. 4. Owner to employ counsel, or court to assign.

§ 62. If the owner of any slave charged with a capital offence, shall fail to employ good and sufficient counsel, on behalf of said slave, it shall be the duty of the presiding judge, before whom such slave may be tried, to assign counsel learned in the law to defend said slave, who shall be entitled to receive from the owner the sum of twenty dollars for his services.

Ib. Sec. 5. Penalty for secreting an accused slave.

§ 63. If the owner, or any other person having charge or government of any slave, who shall be charged with any capital crime, shall conceal or carry away any such slave, so that he or she cannot be brought to condign punishment, every owner or other person so offending, shall forfeit the sum of five hundred dollars.

Ib. Sec. 6. Jury shall determine what portion of the value the owner shall have.

§ 64. After the jury have found the value of the negro as aforesaid, they shall also say what portion of the same the master shall have, which in no case shall exceed one-half of the value so found; and the prosecuting officer shall inquire as to all facts which would go to show the portion of blame attached to the master, that the jury may rightly assess the amount he shall have.

Ib. Sec. 7. This act not to extend to cases of rebellion, &c.

§ 65. This act shall not be so construed as to extend its benefits to the payment of slaves, executed in cases of rebellion or insurrection, or where neither the master or slave is settled in this state.

1832—(4) *Sec.* 1. Judge of county court and two justices authorized to try persons of colour.

§ 66. The judge of the county court of each and every county in this state, together with two justices of the peace, to be associated with him, or in case there should be no judge of the county court, then any three justices of the peace, shall constitute a court for the trial of all slaves and free persons of colour, charged with any crime or misdemeanor of a higher grade than petit larceny.

Ib. Sec. 2. Mode of bringing the offender to trial under this act.

§ 67. Whenever any slave or free person of color, shall be brought before any justice of the peace, charged with the commission of any crime or misdemeanor of a higher grade than petit larceny, if the justice, after examining the witnesses on the part of the prosecutor, shall believe there exists any reasonable or probable grounds of the guilt or criminality of such slave or free person of color, he shall immediately commit him or her to jail, and shall, at the same time, issue a notice to the judge of the county court of his county, and also to some justice of the peace, which notice shall be served by the sheriff or some constable of the county, informing them of such commitment, and state the time and place of trial, which shall not be less than ten, nor more than fifteen days from the date of said notice; and the said justice who shall make the commitment, as aforesaid, and the judge of the county court, or if there be no judge of the county court, two justices of the peace, summoned as aforesaid, shall form a court to try and determine the said offence; and it shall be the duty of the magistrate to order the sheriff or coroner of his county to summon twenty-four jurors, to be and appear at the place and time appointed, for the trial of said offence, one-half of whom shall be slave-holders; and should the judge of the county court, or any justice summoned to attend said trial, fail to attend, any justice of the peace shall forthwith cause to be summoned two justices of the peace to be associated with him in forming said court, and may adjourn from day to day till the business before them is disposed of.

§ 68. Out of the number of jurors summoned by the sheriff, there shall be drawn twelve, who shall compose and be a jury for the trial of any one prosecuted under this act: *Provided always*, That the accused shall have the right of twelve peremptory challenges; and the state shall have the right of four peremptory challenges; and if the original panel should be exhausted by challenge or otherwise, so that a sufficient number be not left to compose a jury, the court shall order the sheriff to summon a sufficient number of talesmen from the by-standers for that purpose.[1]

Ib. Sec. 3. Jury, how formed.

Challenges by the accused and by the state.

§ 69. In all trials had under this act, it shall be sufficient for the solicitor, or the counsel appointed by the court to prosecute, to write out a brief statement of the nature of the crime or misdemeanor charged against the defendant, and sign his name thereto; and no indictment or presentment shall be necessary.

Ib. Sec. 4. Written statement by solicitor, sufficient without indictment or presentment.

§ 70. If at any court held under this act, the solicitor of the circuit should not be present, the court shall appoint counsel to prosecute, whose fee, amounting to the sum of ten dollars, shall be paid by the state. And if the owner of any slave prosecuted under this act, shall not employ counsel to defend such slave, it shall be the duty of said court to appoint counsel for that purpose, whose fee, amounting to the sum of ten dollars, shall be paid by the owner of said slave; and if any free person of color prosecuted under this act, shall be unable to employ counsel to defend him or her, it shall be the duty of the court to appoint counsel for this purpose, whose fee, amounting to ten dollars, shall be paid out of the county treasury.

Ib. Sec. 5. Court may appoint counsel to prosecute or defend, who shall receive 10 dolls.

§ 71. It shall be the duty of the clerk to issue all subpœnas or other legal process, as well for the defendant as the state, all of which shall be executed by the sheriff; and the said clerk and sheriff shall receive the same fees therefor, as now provided by law for similar services, and none other.

Ib. Sec. 6 Clerk to issue, and sheriff to serve subpœnas.

§ 72. If any slave or free person of color shall be found guilty under this act, it shall be the duty of the court to pronounce sentence in the manner now prescribed by law, which sentence shall be carried into execution by the sheriff: *Provided always*, That if any slave or free person of color shall be found guilty of any capital crime,

Ib. Sec. 7. Sentence and execution.

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[1] See "Slaves," &c.—§ 21. "Witnesses"—§ 9.

there shall not be less than five nor more than ten days, between the day of passing sentence and the day of execution, except in cases of conspiracy, insurrection, or rebellion, when the sentence of the court may be executed forthwith.

DEPOSITIONS.

1807—(32) *Sec.* 11. Depositions of non-resident and infirm witnesses.

§ 1. When a person who may be a witness in any cause in any of the courts, shall reside out of this territory, or shall, by reason of age or bodily infirmity, or any other cause, be incapable of attending, to give his or her testimony in court, oath thereof being made to any judge, justice, or clerk of the court wherein such suit is depending, such judge, justice, or clerk is hereby empowered to issue, or order the clerk of the court wherein such cause is depending, to issue a commission to one or more persons, to take and receive the deposition of such witness; which being duly taken and returned, as hereinafter directed, shall be received as legal testimony: *Provided*, That the party praying such commission shall give such notice to the adverse party of the time and place, when and where such commission is to be executed, as the court, judge, justice, or clerk shall think proper; and the adverse party shall have liberty to cross-examine any witness whose deposition shall be so taken.

Ib. Sec. 12. Of witnesses about to leave the territory.

§ 2. If any person, who may be a witness in any cause, depending in any of the said courts, shall be under the necessity of leaving this territory before such cause is to be tried, or even before it be at issue, upon oath thereof being made before any judge or justice of the court, wherein the cause is depending, such judge or justice is hereby empowered to take the deposition of such witness, provided it shall appear by the oath of an indifferent person, that sufficient notice of the time and place of such application has been given to the opposite party: or such judge or justice may order the clerk of the court wherein such cause is depending to issue a commission to one or more persons to take the deposition of such witness; such notice being first given to the adverse party of the time and place, when and where such deposition is to be taken, as the judge or justice, awarding such commission, shall direct, which deposition, when returned, taken in manner aforesaid, shall be received as legal evidence. (1)

Ib. Sec. 13. Testimony of absent witnesses may be taken by interrogatories.

§ 3. In any case, depending as aforesaid, either party wishing to improve the testimony of witnesses absent from the territory, may take the same by interrogatories, the party making oath before any one of the judges, justices, or clerk of the court, where such cause is depending, of the absence of such witness, and that he believes his testimony material; such judge, justice, or clerk may, if the oath be taken before the clerk, issue, or if it be taken before a judge or justice, may order the clerk of the court, in which such cause is depending, to issue a commission as aforesaid, directing the commissioner or commissioners to call the witness or witnesses before him or them, at a time and place, by him or them to be appointed. But the party applying for such *dedimus* shall file his interrogataries in the clerk's office, and serve the opposite party with a copy thereof, with notice of the day on which such *dedimus* will issue, at least ten days before the same shall issue; in which time the opposite party may file his cross-interrogatories; and the interrogatories, and cross-interrogatories, if any there be, shall accompany such *dedimus*; and if any deposition taken by interrogatories shall contain any testimony but the answers to such interrogatories, such surplusage shall not be read in evidence.

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(1) Depositions may be valid, though in the hand-writing of the attorney of the party offering them. Wynn & Wife *v.* Williams, *Min. Rep.* 136. Notice of taking depositions, left at the dwelling-house of the party, with his clerk, is not sufficient. M'Ewen *v.* Morgan, 1 *Stewt. Rep.* 190. See also, Braham *v.* Debrell, *ib.* 14.

§ 4. All depositions shall be considered as taken *de bene esse*. *Ib. Sec.* 14.

De bene esse. 1818—(14) *Sec.* 9. Justice may issue commission to another county, or beyond the state.

§ 5. When a witness whose testimony may be material in any action or suit pending before any of the justices of the peace of this territory, resides at such a distance from the county wherein such suit may originate, as to render the obtaining of his testimony doubtful, according to the ordinary mode of procedure; or shall reside without the limits of the Alabama territory; it shall be lawful for such justices of the peace, before whom such suit may be pending, on the affidavit of the party desirous of availing himself of the testimony of such absent witness, stating the materiality of the testimony, to grant and to issue a *dedimus potestatem*, to be directed to one or more persons resident in the county where such absent witness resides, requiring him or them to execute such dedimus; which dedimus shall be subject to the same regulations, and be governed by the same restrictions and provisions as are already provided by law, for cases originating in the superior courts of law of this territory, and to stay all proceedings pending before him or them, until a sufficient length of time to execute such dedimus shall have elapsed.

1833—(39) *Sec.* 1. Depositions of officers in the public service, how taken.

§ 6. It shall be lawful for any person who may wish to use the testimony of the governor, treasurer, secretary of state, comptroller, or any one of the judges of the supreme court or circuit courts, or solicitors, or clerks of the circuit and county courts of this state, president or cashier of the Bank of the State of Alabama or either of its branches, register or receiver of any of the land offices in said state, in any civil matter or suit pending in any of the courts of this state, after making oath of the materiality of the testimony or witness in said suit, and that he is in one of the vocations above specified, to proceed to take their or either of their depositions, in the same manner and under the same regulations and restrictions, as is now usual and lawful in taking depositions of non-resident citizens.

1833—(20) *Sec.* 1. Governor to appoint commissioners in other states.

§ 7. The governor of the state shall have power to nominate, appoint, and commission one or more persons in each of the other states of the United States, and in the District of Columbia, who shall be authorized to receive and reduce to writing, the testimony or deposition of any witness or witnesses, person or persons, who may come before him and depose, concerning any matter or thing, suit or controversy, within the state of Alabama.

Ib. Sec. 2. Testimony taken may be read, &c.

§ 8. The testimony or deposition thus received and reduced to writing, when duly sworn to and subscribed by the witness deposing, and certified by the said commissioner under his hand and seal, may be used in any of the courts of law or equity in this state, and shall have the same validity as the depositions of witnesses taken under and by virtue of the laws, as they have heretofore existed: *Provided*, That nothing in this act contained, shall be so construed as to prevent the taking of testimony by deposition, in the same manner and under the same rules and regulations, as heretofore prescribed by law.

Proviso.

Ib. Sec. 3. Commissioners so appointed to take acknowledg-

§ 9. The commissioners aforesaid, shall have full power and authority to receive the acknowledgment of all deeds and conveyances of real and personal property, lying and being within this state, which are executed without this state, and also may receive the proof of all ments of deeds and wills.

Which may be recorded.

Copies thereof to be evidence.

Proviso.

wills and testaments, bequeathing any property within this state, which shall be executed without this state, in the same manner and under the same regulations, as officers appointed for that purpose, by the law of the state or district, for which said commissioners may have been appointed and commissioned; which deeds and conveyances shall be admitted to record in the county where said real or personal property may lie or be, when the acknowledgment of the same shall have been duly certified before the commissioner receiving the same under his hand and seal; and copies of such will and testaments shall be admitted to probate in the county where the property bequeathed shall lie or be, when proof of the same shall have been duly certified by the commissioner before whom the same was made under his hand and seal: *Provided*, That such copies shall be liable to be contested and controverted in the same manner as the original might have been.

Ib. Sec. 4. Commissioners to file affidavit, &c.

Tenure of office.

§ 10. Each of the said commissioners so appointed and commissioned, shall, (if he intends to accept his said appointment,) as soon as convenient, file in the office of the secretary of state of this state, an affidavit, subscribed and sworn to before some officer competent to administer oaths, by which he shall swear that he will correctly and faithfully discharge his said office of commissioner, according to the best of his skill and judgment, which affidavit shall be certified by the officer before whom the same shall have been made; and further, the said commissioners shall hold their offices during the pleasure of the governor.

Ib. Sec. 5. Secretary of state to register commissioners' names and residences.

§ 11. The secretary of state shall inscribe in some book, kept for that purpose, the names of all commissioners aforesaid, who have signified their acceptance of their said offices, by filing the affidavit aforesaid, together with the places where they may reside, and for which they have been appointed; and shall forward to each of the clerks of the county courts of this state, a certificate or certificates of the appointment of such commissioners, and the place where each resides, within a convenient time after the acceptance of the said commissioners shall have been so signified, which certificate or certificates shall be kept in the offices of the said clerks, and may be referred to by any person or persons desirous thereof.

Note.—For the manner of taking depositions in contested elections of members of the general assembly, See "Elections—Mode of contesting."

DESCENTS.

Con. Ala. Art. 1. *Sec.* 21. *No forfeiture from suicide.*

§ 1. The estates of suicides shall descend or vest as in cases of natural death: if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

1806—(1) *Sec.* 16. Lands of intestate, how to descend.

§ 2. When any person shall die seized of any estate or inheritance in lands, tenements, or hereditaments not devised, the same shall descend to his or her children, and their descendants, in equal parts; the descendants of the deceased child or grand-child to take the share of their deceased parent, in equal parts among them; and when there shall be no children of the intestate, nor descendants of such children, then to the brothers and sisters of the intestate, and their descendants, in equal parts; the descendants of a brother or sister of the intestate to have in equal parts among them, their deceased parent's share; and where there shall be no children or descendants of them or any of them, and no brothers or sisters, or descendants of them, or any of them, then to the father if he be living, if not, to the mother of the intestate; and if there be no children of the intestate, or descendants of such children, and no brothers or sisters, or descendants of them, nor father or mother, then such estate shall descend in equal parts to the next of kin to the intestate, in equal degree, computing by the rules of the civil law; and there shall be no representation among collaterals, except with the descendants of the brothers and sisters of the intestate; and there shall in no case be a distinction between the kindred of the whole and half blood, except the kindred of the whole blood in equal degree shall be preferred to the kindred of the half blood in the same degree; saving to the widow of the intestate, in all cases, her dower. And where there shall be no children of such intestate, nor descendants of them, then the widow shall have as her dower, one-half of such before-mentioned estate of her deceased husband.

Widow's dower, when no lineal descendants.

§ 3. Where a man, having by a woman a child or children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimated.

Ib. Sec. 18.
Children before marriage, legitimated.

§ 4. Bastards shall be capable of inheriting, or of transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother; and shall also be entitled to a distributive share of the personal estate of any of their kindred, on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

1824—(5)
Sec. 1.
Bastards to inherit on the part of the mother.

§ 5. The kindred of any bastard on the part of his mother, shall be entitled to the distribution of the personal estate of such bastard, in like manner as if such bastard had been lawfully begotten of his mother.

Ib. Sec. 2.
Bastard's kindred to have distribution of his estate.

§ 6. When two or more persons hold an estate, real or personal, jointly, and one joint-tenant dies before severance, his interest in said joint estate shall not survive to the remaining joint-tenant, or joint-tenants, but shall descend to, and be vested in the heirs or other legal representatives of such deceased joint-tenant, in the same manner as if his interest had been severed and ascertained.

1818—(1)
Sec. 1.
Estates in joint-tenancy to descend as though severed.

NOTE.—Posthumous children not provided for by will, are entitled to inherit as in case of intestacy.—See "Wills,"—§ 6.

DISQUALIFYING LAWS.

§ 1. LAWS shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors.

Con. Ala.
Art. 6.
Sec. 5.

§ 2. Any person who shall be convicted of bribery, forgery, perjury, larceny, subornation of perjury, receiving stolen goods, knowing them to be stolen, or shall be convicted of stealing, or altering, or defacing any record, with intent to defraud, shall be disqualified from holding or exercising any office under this state, from serving as a juror in any suit, from giving testimony before any judicial tribunal in this state, and from voting at any election therein.

1827—(33)
Sec. 1.
Certain crimes disqualify from holding office, voting, or serving as juror or witness.

NOTE.—Disqualification for embezzlement by bank officers.—See "Bank of the State of Alabama,"—§ 19. Branch at Montgomery,—§ 8; at Decatur,—§ 7; at Mobile,—§ 8. Assessors and collectors of taxes, convicted of making a false and fraudulent return, shall be thenceforth incapable of holding any office of profit, honor, or trust within this state.—See "Taxes,"—§ 46.—See also "Duelling,"—§ 10.

DIVORCES.[1]

Con. Ala. Art. 6. *Sec.* 13. Divorces.

§ 1. DIVORCES from the bonds of matrimony shall not be granted but in cases provided for by law, by suit in chancery; and no decree for such divorce shall have effect until the same shall be sanctioned by two-thirds of both houses of the general assembly.

1824—(15) *Sec.* 1. Causes of divorce. Natural impotency.

§ 2. Where a marriage hath been heretofore, or shall be hereafter contracted and celebrated between any two persons, and it shall be adjudged that either party at the time of the contract was, and still is, naturally impotent, in every such case, it shall be lawful for the injured person to obtain, in manner heretofore provided by law, a divorce from the bonds of matrimony.

1832—(20) *Sec.* 1. Circuit court may grant divorces in cases of adultery, abandonment, and extreme cruelty.

§ 3. The several circuit courts of this state are hereby invested with full power and authority, to decree divorces in the manner prescribed by law, and in the following cases, that is to say: in favor of the husband, where his wife shall have been taken in adultery, or voluntarily left his bed and board for the space of three years, with intention of abandonment; and in favor of the wife, where her husband shall have left her for the space of three years, with intention of abandonment; or where he shall have abandoned her, and lived in adultery with another woman; or where his treatment to her is cruel, barbarous, and inhuman.

1820—(29) *Sec.* 2. Application for divorce to be by bill in chancery.

§ 4. In the cases before-mentioned, the party desirous of obtaining a divorce, may apply to the circuit court of that county, in which he or she resides, by a bill in chancery, stating the grounds of the application, on which such proceedings shall be had as are usual in other suits in chancery.

Ib. Sec. 3. Notice to non-resident defendants.

§ 5. If the court shall be satisfied that the defendant is not a resident of this state, order of publication shall be made as in other cases of non-resident defendants, except that the order shall succinctly state the object of the bill.

Ib. Sec. 4. Defendants, may answer without oath. Bill not confessed for want of answer.

§ 6. The defendant may appear and answer the complainant's bill, without oath, denying the allegations thereof, or if the defendant shall fail to appear and answer, the cause may be set down for trial, but the bill shall not be taken for confessed, but proof shall be required to support the allegations thereof, as in cases where they are decided by answer.

Ib. Sec. 5. Decree not to release offending party.

§ 7. The court may pronounce a decree for a divorce according to the provisions of this act; but such decree shall not operate so as to release the offending party, who shall remain nevertheless subject to all the pains and penalties which the law prescribes against a marriage, where a former wife or husband is living.

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[1] An act passed March 10, 1803, entitled "An act concerning divorce and alimony," provides:—

Sec. 3. *That* divorces from the bond of matrimony, shall be decreed in cases where the parties are within the degrees prohibited by law, in cases where either party is naturally impotent, and in case of adultery in either of the parties, and also for wilful, continual, and obstinate desertion, for the term of five years; *but the decree or sentence of divorce, in such cases, shall not render illegitimate the issue born under such marriage.*

Sec. 4. *That* divorces from the bond of matrimony shall also be decreed, where either of the parties had another wife or husband, living at the time of such second or other marriage, and that *all marriages, where either of the parties shall have a former wife or husband living at the time of such marriage, shall be invalid from the beginning, and absolutely void.*

The act of December 23, 1824, repeals this law as to all the grounds of divorce above specified, except that of "natural impotency," *continuing at the time of the application for a divorce* by the party injured. The concluding part of each section, however, suggests obvious reasons why they should be retained, at least in this form.

Ib. Sec. 6. Alimony.

§ 8. The court pronouncing the decree of divorce, shall also decree and order a division of the estate of the parties, in such way as to them shall seem just and right, having due regard to the rights of each party and their children, if any: *Provided however*, That nothing herein-contained shall be construed to compel either party to divest him or herself of the title to real estate.

Ib. Sec. 7. Temporary orders.

§ 9. Pending a suit for a divorce, the court may make such temporary orders respecting the property and parties, as they shall deem equitable.

Ib. Sec. 8. Copy of proceedings to be delivered to speaker of house of representatives.

§ 10. When a decree shall be rendered for a divorce, it shall be the duty of such court to make out, at the request of the party in whose favor the decree is rendered, a complete copy of the record and evidence in said suit, which shall be certified by said clerk, and by him sealed up and directed to the speaker of the house of representatives of the state of Alabama, and endorsed thereon that it is a decree for a divorce; which decree and proceedings shall be delivered to said speaker by the party, or his or her attorney, applying for the same, within and during the ensuing session of the legislature.

Ib. Sec. 9. Speaker's duty.

§ 11. It shall be the duty of the speaker of the house of representatives, in the presence of the members of the house, to open such record, and cause the same to be read and proceeded on according to the constitution of the state of Alabama.

1803—(5) *Sec.* 5. Collusive adultery insufficient.

§ 12. If it appears to the court that the adultery complained of is occasioned by collusion of the parties, and done with intention to procure a divorce, then no divorce shall be decreed.

Ib. Sec. 9. Penalty for cohabiting after divorce for adultery.

§ 13. If any persons cohabit together after the divorce, for the cause of adultery, such persons so offending shall be liable to all the pains and penalties provided by the laws then existing against adultery.

1824—(15) *Sec.* 2. Bar against divorce.

§ 14. If it shall appear that the complainant has been guilty of adultery, and has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the said plaintiff (if the husband) allowed of his wife's prostitution, it shall be a bar against a divorce for such previous misconduct.

Ib. Sec. 3. Mutual adultery.

§ 15. In all cases where both parties shall be guilty of adultery, it shall be a bar to a divorce.

Ib. Sec. 4. Confessions not evidence.

§ 16. In order to prevent collusion between the parties, in no case shall the confession of them, or either of them, be taken or received as evidence in any case of divorce.

Ib. Sec. 5. Subsequent marriage of the party in fault, void.

§ 17. In no case of divorce shall the party against whom such divorce may be granted, or who may have been guilty of any of the offences upon which such divorce may have been granted, be allowed to marry again; and in case the said party shall marry again, such marriage is hereby declared null and void; and the party so marrying again shall be liable to such penalties as are prescribed for the crime of adultery.

Ib. Sec. 6. Complainant must have resided 3 years in the state.

§ 18. No person shall be permitted to commence a suit in chancery for a divorce, until he or she shall have been an inhabitant of this state at least three years immediately preceding.

Ib. Sec. 7. Divorces from bed and board.

§ 19. Divorce from bed and board may be granted for extreme cruelty in either of the parties, on the application of the party aggrieved, by the same proceedings in the circuit court of the county, in which the complainant may reside, as are, or may be required by law to be had, on bill, praying divorce from the bonds of matrimony, and the divorce of such circuit court shall be final.

1833—(1) *Sec.* 1. Chancery courts in cases of separation between man and wife may assign children to either.

§ 20. The courts of chancery shall have power in all cases of separation between man and wife, and neither party shall obtain a divorce, to give the custody and education of the children to either the father or mother, as to them may seem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the child or children.

1833—(15) *Sec.* 1.

§ 21. The courts of chancery shall have power, in cases of the separation of parents, to permit either the mother or father to have the care and education of the children, or any of them, as to said courts may seem just and proper; to be determined and decided on the petition of either party; and in the meantime to issue any injunction, or make any order, that the safety and well-being of any such children may require.

DOWER.

1806—(1) *Sec.* 11. Widow may waive provision by will, and claim her dower.

§ 1. The widow may in all cases waive the provision made for her in the will of her deceased husband, and claim her dower, which shall be assigned her accordingly; in which case she shall receive no part of such provision, unless it appears plainly by the will that the testator intended it in addition to her dower.

Ib. Sec. 17. Widow's dower, when the estate is insolvent.

§ 2. When the estate of any testator or intestate shall be represented insolvent, and shall not be sufficient, both real and personal, to pay the just debts, the widow of such testator or intestate shall, though there be no children or descendants to them of such testator or intestate, be endowed with one-third only of the lands, tenements, and hereditaments of her deceased husband, anything in this act to the contrary notwithstanding.[a]

[a] See *Descents*, § 2.

1812—(14) *Sec.* 1. How the widow shall be endowed when the husband dies intestate, or she dissents to his will.

§ 3. When any person shall die intestate, or shall make his last will and testament, and not therein make any express provision for his wife, by giving and devising unto her such part or parcel of his real and personal estate, as shall be fully satisfactory to her, such widow may signify her dissent thereto in the superior or county court in the county wherein she resides, at any time within one year after the probate of such will, and then and in that case she shall be entitled to dower in the following manner, to wit: one-third part of all the lands, tenements, and hereditaments, of which her husband died seised, and possessed, or had before conveyed, whereof said widow had not relinquished her right of dower, as heretofore provided for by law, which third part shall be and inure to her proper use, benefit and behoof, in and during the term of her natural life; in which said third part shall be comprehended, the dwelling-house in which her husband shall have been accustomed most generally to dwell next before his death, together with the offices, out-houses, buildings, and other improvements thereunto belonging, or appertaining: *Provided*, That if it should appear to the judges or justices of the court to whom application is made, that the whole of the said dwelling-house, out-houses, buildings, and other improvements thereunto appertaining, cannot be applied to the use of the widow, without manifest injustice to the children, or other heirs, then, and in that case, such widow shall be entitled to such part only as the court may deem reasonable and just.[1]

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[1] When the deceased husband has left *no lineal descendants*, the widow is to be endowed with one-half of his real estate: See "Descents,"—§ 2,—unless his estate be insolvent, as above,—§ 2.

Ib. Sec. 2. Widow's share of the personal estate. [a 1826—(35) Sec. 1.]

§ 4. When a husband dies intestate, or shall make his last will and testament, and not make provision therein for his wife, as expressed in the first section of this act, she shall be entitled to share in the personal estate, in the following manner, to wit: [a]if there be no children, or if there be but one child, she shall be entitled, out of the residue left after paying the debts of the deceased, to one-half: if there be more than one child, but not more than four, in that case she shall be entitled to a child's part; but if there be more than four children, then, and in that case, she shall be entitled to one-fifth part in absolute right.

Ib. Sec. 3. Widow may file petition for her dower.

§ 5. It shall be lawful, after the passing of this act, for any widow claiming dower, to file her petition in the superior or county court, in the county where her husband shall have usually dwelt next before his death, setting forth the nature of her claim, and particularly specifying the lands, tenements, and hereditaments of which she claims dower, and praying that her dower may be allotted to her; whereupon the said court shall issue their writ to the sheriff, commanding him to summon five discreet freeholders, as commissioners, connected with the parties neither by consanguinity or affinity, and entirely disinterested, who, upon oath, which oath the sheriff is hereby authorized to administer, shall allot, and set off by metes and bounds to the said widow, one-third part according to quantity and quality, of all the lands, tenements, and hereditaments in said county, and shall put her in possession of the same, which possession shall vest in her an estate for her natural life; and where she has claim to dower to lands lying in different counties, she may proceed in the superior or county court of the county where such land may lie, and make recovery in manner as is hereby directed; and the sheriff and commissioners shall also at the same time allot and set off to such widow her portion of the personal estate of which her husband died possessed, and to which by this law she shall be entitled, which part or portion shall be and inure to such widow, her heirs, executors, administrators, and assigns, for ever.

Portion to be allotted by metes and bounds.

Portion of personal estate to be allotted by sheriff and commissioners.

Ib. Sec. 4. Proceedings on petition to be summary.

§ 6. The proceedings upon such petitions for dower shall be in a summary way, and the court shall, at their first term when such petition is filed, proceed to hear and determine as to them shall seem just and right: *Provided*, That the party petitioning for dower shall give ten days previous notice to the executors or administrators, by serving them with a copy of said petition; and where there are no executors or administrators, or where they do not reside in the county of the residence of such widow, or where the widow shall be the executrix or administratrix, then she shall give the said notice by advertisement in one of the newspapers published in the territory, nearest to the residence of such widow, to be published four times in succession.

Ib. Sec. 5. Widow to retain possession till dower is assigned.

§ 7. It shall be lawful for the widow to retain the full possession of the dwelling-house, in which her husband most usually dwelt, next before his death, together with the out-houses, offices, or improvements and plantation thereunto belonging, free from molestation and rent, until she shall have her dower assigned her.

1816—(6) Sec. 3. Certain lands subject to dower.

§ 8. Whenever any person shall die leaving a widow not satisfactorily provided for, according to the act of the general assembly, passed on the 22d day of December 1812,[1] any land, the title to which shall be secured in conformity to the provisions of this act,[2] shall be subject to the dower of the said widow, in the same manner as if the title had been complete at the time of the death of her husband.[1]

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[1] The second act under this title.

[2] Lands purchased of the United States, for which partial payments only

DUELLING.[2]

Con. Ala. Art. 6. *Sec.* 3.

§ 1. The general assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to disqualification from office, or the tenure thereof, as they may deem expedient.

1804—(1) Preamble.

Whereas, from a false sense of honor, the inhuman, injurious, and detestable practice of duelling, has been too often and unhappily resorted to as a mode of adjusting or settling differences of small magnitude between individuals: *And whereas*, this barbarous and savage conduct has of late obtained a great degree of prevalence, to the destruction of the lives of some valuable members of society, and involving the feelings of others, who from principle, and respect for the laws of their country, will not engage in this pernicious practice:

Sec. 1. Penalty for sending, conveying, or accepting challenge, and for fighting duel.

§ 2. *Be it therefore enacted, &c.* That from and after the passing of this act, if any person or persons shall deliver, offer, or send any challenge in writing, verbally, or otherwise, to fight a duel, or shall accept such challenge, or shall fight a duel, and neither of the parties be killed, or shall be the bearer of such challenge, knowing the same to be such; the person or persons so offending, their aiders, or abettors, and each of them, shall, on conviction thereof, be fined in the sum of one thousand dollars, and be imprisoned twelve calendar months, and be rendered incapable of holding any office of honor, profit, or trust, under the government of this territory, for and during the term of five years from the time of such conviction.

Ib. Sec. 2. Encouragers of duel subject to like penalty.

§ 3. If any person or persons, residing or being in this territory, shall promote, concert, plan, or in any manner encourage the fighting of a duel between persons residing or being in this territory, whether the same duel be fought or not within this territory or elsewhere, such person or persons shall be subject to the pains and penalties prescribed in the preceding section of this act.

Ib. Sec. 3. Killing in a duel, murder, and punishable with death.

§ 4. If any person residing or being in this territory, do hereafter actually fight a duel, and either of the combatants be killed, the survivor, with such other person or persons who may have aided or assisted in the said duel, shall be deemed guilty of wilful murder, and on conviction thereof, shall suffer death.

Ib. Sec. 4. Justice to arrest and examine all persons suspected.

§ 5. *And whereas*, persons guilty of the crimes specified in the foregoing section escape punishment through want of sufficient testimony, occasioned by the secret combination of the parties concerned: *Be it therefore further enacted*, When other evidence cannot be had of offences committed against this act, it shall and may be lawful for any justice of the peace, upon his own knowledge, or strong suspi-

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have been made at the time of the testator's or intestate's death, and the title is afterwards completed by the executor or administrator.

[1] The widow shall also be endowed of estates for use, in which, from the nature of her interest, the right, if a legal one, would have entitled her to dower.—See "Conveyances,"—§ 38.

[2] This properly belongs to the general head of "Crimes and Misdemeanors:" —but as the legislature has thought fit to make it the subject of a distinct system of laws, and as those relating to the duelling oath contain nothing of a penal character, a separate title for all the enactments on this subject was deemed preferable.

cion of such offences, or on credible information thereof, to him given on oath or otherwise, to issue a summons, or at his discretion, a warrant in the nature of a *capias*, against any person or persons suspected to be concerned in such offences, which summons or warrant shall be returnable before one or more justices of the peace, who are hereby empowered, if necessary, to issue interrogatories in the premises to such person or persons, and to compel them to answer the same fully upon oath; and in case of their refusal, to cause them to be confined until they shall comply: *Provided*, That the person or persons so answering fully and satisfactorily, shall be wholly and entirely released and discharged from all manner of punishment for such offence or offences as he or they may be implicated in, by his or their answers as aforesaid; and the justice before whom such testimony is delivered, shall take recognizance or recognizances of such person or persons, binding him or them to appear at the succeeding superior court for the district or county in which the offender or offenders shall reside, as in other cases.

Persons answering fully to be exonerated.

Ib. Sec. 5. Duty of justices and solicitors. Penalty for neglect.

§ 6. Each and every justice of the peace and attorney general[1] in this territory, is hereby enjoined to carry this act into strict execution, and prosecute all offenders within the meaning thereof. And if any justice of the peace or attorney general, having knowledge or information of any offence committed against this act, shall fail to perform the several duties required of them respectively, such neglect of duty is hereby declared to be a misdemeanor, and for which such justice or attorney general shall be removed from office, and be rendered incapable of holding any office of honor, trust, or profit, under the government of this territory, for and during the term of two years thereafter.

Ib. Sec. 6. Fines, how collected and appropriated.

§ 7. All fines and forfeitures which shall be incurred under this act, shall be collected by the sheriff of the particular county where such offender or offenders reside, and paid by him into the territorial treasury.

1819—(13) *Sec.* 1. Fighting and challenging prohibited.

§ 8. No person residing within the state, or being within the limits thereof, shall fight a duel, nor shall any person send or give a challenge either in writing, verbally, or otherwise, to fight a duel. (1)

Ib. Sec. 2. Judges, justices, &c. required to apprehend persons about to fight a duel, and bind them over.

§ 9. If any judge of the circuit court, or justice of the county court, or justice of the peace within this state, have just or probable grounds of suspicion that any person or persons are about to be engaged in a duel, they, or either of them, shall by this act have power, and be compelled to issue a warrant to any constable, sheriff, or in the absence of these officers, to any person who is not a qualified peace-officer, to take the body or bodies of all whom he may suspect to be concerned, either as principals, seconds, counsellors, aiders, or abettors, and have them brought before him: and if, after such examination as the judge or justice may think proper, it should appear there are just grounds for believing that a duel is intended, it shall be the duty of such judge or justice to bind the parties suspected in a recognizance, in such sum as he may deem requisite, with sufficient securities, to appear at the next county or circuit court, as well as bind them to keep the peace until the rising of the court to which they are bound to appear.

Ib. Sec. 3. Persons engaged in fighting a duel, to be punished by imprisonment and fine.

§ 10. If any person or persons be engaged, either as principals or seconds, in fighting a duel; or in other words, fighting in single combat with any deadly weapons; the principals and seconds, and every person or persons directly or indirectly concerned therein, either in sending, giving, accepting, or conveying any such challenge, knowing or believing it to be such, their counsellors, aiders, or abettors, upon being thereof lawfully convicted, shall be imprisoned three months, and shall severally forfeit and pay a fine to be assessed by any court having jurisdiction, not exceeding two thousand dollars, the one-half thereof to be appropriated to the use of the state, and the other half to the use of the informer, and shall stand committed until such fine is paid, and until he or they shall severally give ample security, to be approved by the court aforesaid, for his or their good behavior, for any term of years not exceeding two, and he or they shall be forever disqualified from being a member of either branch of the legislature, and from holding any office, or appointment of profit, honor, or trust, either executive, civil, military, or otherwise, in or under the authority of this state: *Provided however*, That in case any death shall happen in consequence of any duel or single combat with deadly weapons, this act shall not be so construed as to save the offenders, their aiders and abettors, from the pains and penalties of the laws provided for the punishment of wilful murder; and on conviction thereof, shall suffer death.

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[1] At the date of this act, all solicitors were styled "Attorneys General."

(1) Since the statute of 1819, the mere giving a challenge to fight a duel, is not punishable, either by statute or common law, unless a combat takes place. Smith *v.* The State, 1 *Stewt. Rep.* 506.

and be disqualified from holding any office.

Proviso.

Further punishment.

Ib. Sec. 6. Judges to charge grand juries.

§ 11. It shall be the duty of all judges of the circuit courts in this state, to give this act specially in charge to the grand jury, at the commencement of each of their respective sessions.

Ib. Sec. 7. Grand jury empowered to send for persons.

§ 12. The foreman of the grand jury, or any member thereof, in their retirement, shall have power, under the authority of the court then sitting, to send for any person or persons, who, on oath, shall give the grand jury such information as they may possess, relating to, or touching the violation of this law; and it shall be the duty of the grand jury to make presentments to the court of all such as may be violators, who shall be tried and dealt with as the existing laws may direct.

Ib. Sec. 8. Justices, &c. liable to indictment for not preventing duel.

§ 13. If any justice or other officer bound to preserve the public peace, shall have knowledge of an intention to fight with any deadly weapons, given or received, and not use or exert his official authority to arrest the parties, and prevent the duel, such justice or other officer shall, for such neglect of duty, be indicted, and on conviction be dismissed from office.

Ib. Sec. 9. No person allowed to publish another as a coward.

§ 14. If any person or persons shall, in any newspaper or handbills, written or printed, publish or proclaim any other person or persons as a coward, or use any opprobrious or abusive language for not accepting a challenge, or fighting a duel; such person or persons, so offending, shall on conviction, be sentenced to pay a fine not exceeding five hundred dollars, as the court may order and direct.

Ib. Sec. 10. Printer's liability.

§ 15. The publisher or printer of any newspaper, handbill, or other publication shall, in all prosecutions under the last-mentioned section, be summoned as a witness, and be accepted by the court as a witness, against the writer or writers of such publication or handbill; and if the said printer or printers, when summoned before the court, shall refuse to give up the writer's name or names, the court shall consider him or them as guilty of flagrant contempt, and shall proceed to punish him or them in an exemplary manner.

1826—(7) Sec. 1. All public officers and attorneys at law to take an oath against duelling.

§ 16. All members of the general assembly, hereafter to be elected, and all officers and public functionaries hereafter elected or appointed, under the authority of the constitution and laws of this state, and counsellors and attorneys at law shall, before they enter upon the discharge of the duties of their stations or offices, either civil, military, or otherwise, take and subscribe one of the following oaths, as the case may be, (in addition to the oath prescribed by the constitution,) before any judge of the circuit or county court, or any justice of the peace, who shall deliver such oath to the clerk of the circuit court for safe keeping. "I, —— —— do solemnly swear, (or affirm, as the case may be,) that I have, neither directly nor indirectly given, accepted, or knowingly carried a challenge in writing, or otherwise, to any person or persons (being a citizen of this state,) to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, or aided or abetted in the same, since the first day of January, one thousand eight hundred and twenty-six; and that I will, neither directly nor indirectly, give, accept, or knowingly carry a challenge in any manner whatsoever, to any person or persons (being a citizen of this state,) to fight in single combat or otherwise, with any deadly weapon, in or out of the state, or in any manner whatsoever aid or abet the same, during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function." [a]And upon his or their refusing to take the oath aforesaid, his or their seat, if a member of the general assembly, or his or their office, or public function, or appointment, shall be vacated, and shall be filled in the same manner as if he or they had resigned. [b]Any attorney or counsellor at law, failing or refusing to take said oath, shall not be permitted to practise as such in any court in this state.

Form of oath.

[a 1819—(13) *Sec.* 4.] **Consequence of refusing to take the oath.**

[b 1819—(13) *Sec.* 5.]

§ 17. Any person or persons, who has or have emigrated to this state since the first day of January, one thousand eight hundred and twenty-six, or may hereafter become a citizen of this state, shall, before he enters upon the discharge of any public function, take and subscribe the following oath: "I, —— —— do solemnly swear (or affirm, as the case may be,) that I have, neither directly nor indirectly, given, accepted, or knowingly carried a challenge, in writing or otherwise, to any person or persons, (being a citizen or citizens of this state,) to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, or aided or abetted in the same, since I have been a citizen thereof; and that I will, neither directly nor indirectly, give, accept, or knowingly carry a challenge in any manner whatsoever, to any person or persons, (being a citizen or citizens of this state,) to fight in single combat or otherwise, with any deadly weapon, in or out of this state, or in any manner whatsoever aid or abet the same during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function.[1]

Ib. Sec. 2. **Form of oath for such as emigrate to the state after January 1, 1826.**

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[1] This act was passed *verbatim*, December 6, 1821, except that it required the oath against duelling to be retrospective as far as the first of January, 1821, with a corresponding variation in the case of emigrants. An act passed December 24, 1823, empowers those persons who had taken an oath under the act of 1819, to release themselves from it, by taking and subscribing the oath prescribed in the act of December 6, 1821. All these acts are covered by the repealing clause of the act of January, 1826—and are now no further in force, than as interpreters of the rights and liabilities of such as conformed to their provisions, while unrepealed.

ELECTIONS.

Con. Ala. Art. 3. *Sec.* 5. Who are qualified electors.

§ 1. EVERY white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector; provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this state; and provided also, that no elector shall be entitled to vote, except in the county, city, or town (entitled to separate representation,) in which he may reside at the time of the election.

Ib. Sec. 6. Electors' privileges.

§ 2. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to, and returning from the same.

Ib. Sec. 7. Elections, by ballot.

§ 3. In all elections by the people, the electors shall vote by ballot, until the general assembly shall otherwise direct.

Ib. Sec. 8. Where held.

§ 4. Elections for representatives for the several counties, shall be held at the place of holding their respective courts, and at such other places as may be prescribed by law.

Art. 6. *Sec.* 4. Bribery.

§ 5. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of the state, who shall be convicted of having given or offered any bribe, to procure his election or appointment.

Ib. Sec. 15. Returns of elections.

§ 6. Returns of all elections for officers who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

1812—(18) *Sec.* 2. Sheriff to give one month's notice of general election.

§ 7. The sheriff of each county shall, at least one month previous to the time appointed for holding every election for representatives to the general assembly, by advertisement, set up at the door of the court-house, and three other public places in his county, notify the inhabitants of his county, of the time and place of such election, and what offices are to be filled by such election. The sheriff, on the day of every such election, shall open the poll by twelve o'clock, and continue the same open until the hour of four in the afternoon.[1] A suitable ballot-box shall be previously provided by the sheriff, to be paid for by the order of the county court, out of the county treasury.

Polls, when opened, &c.

Ib. Sec. 3. Coroner or justice to attend elections if no sheriff is present.

§ 8. If at any time it shall happen, that there shall be no sheriff in any county, or in case he is unable to attend, or does not attend said elections, the coroner of such county, or if there be neither sheriff nor coroner, the justice of the peace who is oldest in commission, is hereby authorized to perform the duties which, by this act are enjoined upon the sheriff, and shall be considered as the returning officer of such county.

Ib. Sec. 7. Inspectors.

§ 9. The county courts respectively, at the term next preceding the day of any election, shall appoint three inspectors to superintend the election; and if it shall at any time happen, that the county court shall fail to make such appointment, or if any person so appointed shall fail, from any cause whatever, to serve, the sheriff with the advice of three justices of the peace, or if no justices shall be present, three respectable landholders, shall appoint the said inspectors.

Ib. Sec. 8. Clerks.

§ 10. The said inspectors shall appoint two persons to act as clerks at every election, whose duty it shall be, to take down in writing, on separate lists, the name of every person voting.

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[1] At the court-house, until the hour of five.—See § 24.

§ 11. The clerks and inspectors of every such election, shall, before they proceed to business, swear (or affirm as the case may be) faithfully to perform their duties at such election, justly and agreeably to law, according to the best of their skill and judgment.

Ib. Sec. 9. Inspectors and clerks to be sworn.

§ 12. Every person who by law is entitled to vote for representatives to the general assembly, and who shall choose to vote at any election, shall give to the sheriff, coroner, or justice, whoever may be the returning officer, in presence of the inspectors, a ticket or scrawl of paper, rolled up, on which shall be written the name or names of the person or persons for whom he intends to vote; which ticket the said returning officer shall, in the presence of the inspectors, put into the ballot-box, and at the same time the clerks of the election shall take down, on separate lists, the name of every person voting; and when the election shall be finished, the returning officer and inspectors shall in the presence of such of the candidates, and electors as may choose to attend, open the box, and number the ballots; at the same time reading aloud the names of the persons who shall appear on each ticket, which shall be taken down by the clerks in the presence of the said returning officer and inspectors, and if there should appear two tickets rolled up together, or if any ticket shall contain the names of more persons than such elector had a right to vote for, in either of these cases, such ticket shall not be numbered, but shall be adjudged void; and when the tickets shall be numbered, the persons having the greatest number of ballots shall be declared duly elected; but when two persons shall have an equal number of votes, the returning officer shall have the casting vote, but shall not vote in any other case whatsoever: and it shall be the duty of the said returning officer, to certify in writing the names of the persons duly elected, which certificate shall be delivered to each representative so elected as aforesaid.

Ib. Sec. 10. Manner of procedure at elections.

§ 13. The returning officer, within ten days after any election, shall, at the request of any person elected to serve in the general assembly, or to congress, or other person in his or their behalf, cause a true copy of the list of voters, and the number of votes for each candidate to be made out, certified, and signed by him, and delivered to the person requesting the same: and if any returning officer shall refuse so to do, or shall hold elections in any other manner than is by this act directed, or shall neglect or refuse to make returns of the elections held by him, he shall forfeit and pay the sum of one thousand dollars, to be recovered by action of debt in any court having jurisdiction thereof; one-half to the use of the county in which such election shall have been held, and the other half to the use of the person who shall sue for the same.

Ib. Sec. 11. List of voters to be made out.

Penalty for neglect, &c.

§ 14. After the election shall be closed, it shall be the duty of the managers of said elections, to number the ballots given for each candidate to congress, and cause the same to be taken down by the clerks thereof.

Ib. Sec. 12. Ballots for congress to be numbered.

§ 15. Any person elected to serve in the house of representatives of this territory, who shall, either directly or indirectly, give, or agree to give to any elector, money, meat, drink, or other reward, in order to be elected, or for having been elected for any county, shall be expelled.

Ib. Sec. 15. Bribery prohibited.

§ 16. The inspectors of elections shall take care that such elections shall be conducted fairly and agreeably to law: they shall endeavor to prevent all riotous and disorderly behavior, and for this purpose shall have authority to commit to prison, for a period not exceeding two days, any person or persons who shall, by such riotous or disorderly behavior, disturb the fair and legal course of such

Ib. Sec. 18. Inspectors to suppress riots.

election; and they shall read, or cause to be read aloud at the court-house door, by the returning officer, this act, immediately after the polls are opened.

1815—(11) *Sec.* 2. Penalty for voting without being qualified, &c.

§ 17. Every person who shall vote at any election not being legally qualified; or who shall vote at more places than one, at any election; or shall vote out of the county, or election district of his permanent residence, shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt in any court having competent jurisdiction; one moiety thereof to be applied to the use of the proper county, and the other to the use of the person suing for the same: *Provided*, That such action shall be commenced within six months after such offence shall have been committed. [a]And when the inspectors or managers of an election, or any of them, shall have reason to doubt the competency of any person offering to vote, it shall be their duty to administer to such person so offering to vote, an oath or affirmation, touching his qualification, as ascertained by the fifth section of the third article of the constitution of this state.

[a1833—(18) *Sec.* 1.] Test oath by the managers.

1819—(8) *Sec.* 1. Court-houses, places of holding election. When held.

§ 18. Hereafter the court-house shall be the place of holding general elections, in each and every county throughout this state, for the purpose of electing governor, members to congress, members of the general assembly, sheriffs, and clerks. The election at the court-house, as aforesaid, shall be holden on the first Monday in August, in each and every year.

Ib. Sec. 2. Time for receiving votes at election precincts.

§ 19. The election holden at other places than the places of holding the general elections in each county, shall continue open to receive votes, the first day of the general elections only:[1] and on the second day of said election, it shall be the duty of the managers, on the close of every election, to count out the tickets. Each manager shall take a memorandum of the number of votes each candidate may obtain, and forward to the managers at the court-house, by the returning officer, a certified statement of the polls of such election; and the managers aforesaid, shall return all the tickets so counted, into the election box, together with the clerk's list of voters, seal, and safely keep it twenty days. And in case of contested elections, one of said managers shall forward the box, containing the tickets, to the principal managers at the court-house.

Duty of managers.

Contested elections.

Ib. Sec. 3. Penalty on the sheriff for failing to make returns.

§ 20. The elections aforesaid, shall be conducted by the sheriff and managers appointed, in the same manner as heretofore by law directed. And if the sheriff shall fail to make a return of the election to the seat of government, in manner and form as by the constitution directed, within the first three days of the session of the general assembly next immediately succeeding such election, he shall forfeit and pay the sum of one thousand dollars, to be recovered by suit, prosecuted by the attorney general; and when recovered, paid into the public treasury for the use of the state.[2]

Ib. Sec. 4. Additional duties of managers. To number the ballots.

§ 21. In addition to the duties heretofore required to be performed by the said managers of the elections, they shall also be required to number the vote or ballot of each and every voter, with the same number that such voter stands marked or enrolled on the lists of the clerks to said elections; the votes from every place of holding said elections, after having been counted, shall be filed separately for the space of twenty days, except in the counties of Covington, Henry, and Pike, where they shall be preserved for sixty days,[a] at the end of which time, the said votes shall be destroyed by the managers of the several elections, unless notice shall be given to the said managers, that some part or parts of said election will be contested; then and in that case, it shall be the duty of the said managers to seal, in one box or packet, the said separate files, and forward the same to the secretary of state, on or before the first day of the next succeeding session of the general assembly, to be used in evidence by those whose duty it shall be to decide contested elections.

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[1] Before the act of 1820, the polls were required to be kept open for receiving votes, at the court-house in each county, during two successive days.

[2] See § 31.

[a] *Jan.* 1, 1823.
Votes to be destroyed, except in cases of contested elections, when they shall be forwarded to the secretary of state.

§ 22. The managers of the several elections, in addition to the oath heretofore prescribed by law, shall also swear, that "they will not themselves, or knowingly suffer any other person, to compare the number of said ballots with the number of the votes enrolled by the clerks as aforesaid, but faithfully to discharge the requisitions of this act, strictly and impartially."

Ib. Sec. 5.
Additional oath of managers.

§ 23. In all elections hereafter to be holden in this state, for governor, members to congress, members of the general assembly, sheriffs, and clerks, the polls shall be kept open but one day for receiving votes at the different places of holding courts in each county only, as well as at the different precincts.

1820—(5)
Sec. 1.
Polls kept open one day only.

§ 24. The polls shall be kept open at the elections to be held at the different places of holding courts in each county, till the hour of five o'clock in the afternoon of said day.

Ib. Sec. 2.
Hour for closing polls at C. H.

§ 25. Hereafter it shall be the duty of the sheriff or other returning officer, of any general election, to summon one justice of the peace of the county where the election is to be held, to attend at each election precinct of said county, for the purpose of qualifying the managers appointed to such election precinct.

1826—(10)
Sec. 1.
Sheriff to summon a justice to attend each precinct.

§ 26. In case any justice of the peace fails to attend and qualify the managers at any precinct, according to the provisions of this act, then it shall be the duty of the managers to apply to any other justice of the peace, whose duty it shall be to qualify the managers of such election.

Ib. Sec. 2.
On failure of justice summoned, managers may apply to another.

§ 27. Whenever one or more of the managers appointed by the returning officer, shall fail to attend, or refuse to act, the remaining manager or managers, shall fill such vacancy or vacancies; and if all the managers shall fail to attend, or refuse to act, any justice of the peace shall be authorized to appoint the managers to such election precinct.

Ib. Sec. 3.
Vacancy in managers appointed, how filled.

§ 28. If it should so happen, that no justice of the peace can be procured to administer the oaths prescribed in this act, it shall be the duty of the officer holding said election, and he is hereby authorized to administer the oaths to the managers holding the election.

Ib. Sec. 4.
No justice attending, returning officer to administer the oaths.

§ 29. Should the officer appointed to attend, fail to do so, the managers shall have the power to appoint one to act in his stead.

Ib. Sec. 5.
Managers to appoint officers in certain cases.

§ 30. The clerks of the county courts shall, in all returns to the office of the secretary of state, upon which commissions are to be issued, if to fill a vacancy, name the person and cause of such vacancy in said return:—if an original appointment, the return shall so express it.

1828—(24)
Sec. 1.
Returns for the purpose of getting commissions.

§ 31. Every sheriff or other officer, whose duty it is or may be to make return of elections, and who shall wilfully fail, refuse, or neglect to make such return to the proper officer within the time prescribed by law, shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt in any court having jurisdiction thereof, to be sued for in the name of the state of Alabama, and applied to the use of the proper county; and it shall be the duty of the

1829—(14)
Sec. 2.
Penalty on returning officer for failing to make return.

attorney general or solicitor of the proper circuit to prosecute for the same; and it shall be the duty of the officer to whom such return should have been made, to certify such failure to the prosecuting attorney of the proper circuit.

1829—(18) *Sec.* 1. Vacancies occurring in general assembly during its session, or within sixty days before.

§ 32. In case of any vacancy which may arise, in either branch of the general assembly, by death, resignation, or otherwise, the governor, or person exercising the duties of that office, may issue writs of election to fill such vacancy, by giving such notice as he may think proper, not less than ten days, which election shall, in all other respects, be governed by the laws of this state on that subject.

CONGRESSIONAL ELECTIONS.

1833—(11) First congressional district.

§ 1. THE state of Alabama is hereby divided into five congressional districts, to wit: the counties of Jackson, Madison, Morgan, Blount, St. Clair, Benton, and Randolph, shall form one district, to be called the first congressional district.

Second.

§ 2. The counties of Limestone, Lauderdale, Lawrence, Franklin, Marion, Fayette, and Walker, shall form one district, to be called the second congressional district.

Third.

§ 3. The counties of Pickens, Tuscaloosa, Jefferson, Bibb, Shelby, Perry, Greene, Talladega, and Sumpter, shall form one district, to be called the third congressional district.

Fourth.

§ 4. The counties of Autauga, Montgomery, Pike, Henry, Dale, Covington, Butler, Lowndes, Conecuh, Coosa, Tallapoosa, Chambers, Macon, Russell, and Barbour, shall form one district, to be called the fourth congressional district.

Fifth.

§ 5. The counties of Mobile, Baldwin, Washington, Clarke, Monroe, Wilcox, Dallas, and Marengo, shall form one district, to be called the fifth congressional district.

Each district entitled to one representative.

§ 6. Each of the aforesaid districts shall be entitled to elect one representative to the congress of the United States, who shall be chosen by the persons qualified to vote for members of the general assembly of this state.

Returning officers.

§ 7. The sheriffs of the counties of Morgan, Lawrence, Tuscaloosa, Montgomery, and Clarke, shall be the returning officers for their respective congressional districts, and the sheriffs of the other counties in their districts, shall make return to the returning officers above mentioned.

Elections how conducted.

[a] *The act following.*

§ 8. Said elections shall in all other respects be conducted in conformity to an act entitled "An act to divide the state into districts, for electing representatives to congress,"[a] passed December 28, 1822.[1]

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[1] There is an evident want of caution in the wording of this act in reference to others previously passed on the same subject. It seems scarcely probable, however, that the vague language of the 8th section, could have been intended to revive the 6th and 7th sections of the act of 1822, which were expressly repealed by the 1st section of an act, passed January 12, 1828, and their provisions supplied, with some variation, by the second section of the same,—which will be found appended to the 5th section of the act of 1822.—(See § 12.) By the repealed parts of the act of 1822, above referred to, the returning officers were required to meet on the *second* Monday in September, after the election, but if prevented by any accident, from meeting at that time, their returns might be received "on the *second Monday thereafter.*" They also provided, that in case of an equal number of votes between two or more candidates, the *returning officers* should decide the election. In another respect, the intention of the legislature is left still more doubtful. The acts, both of 1822 and 1828, require the returning officers to meet at the court-house of the coun-

1822—(10) Sec. 2. Representatives to congress when and how elected.

§ 9. The election of representatives from this state to the congress of the United States, shall be held at the same times and places, and be regulated and conducted by the same law for holding elections for members to represent the several counties in the general assembly of this state, and at the same times and places every two years thereafter; all of which elections are to be conducted by the sheriffs, or by other persons legally appointed therefor, in like manner as the annual elections of the members of the state legislature; and the person having the greatest number of votes in any of the aforesaid districts, shall be the member for that district in the congress of the United States.

Ib. Sec. 3. Managers to keep a separate box for ballots.

§ 10. The managers of each election which may be held for the several counties in this state, shall keep a separate box, in which shall be deposited the ballots for a representative from this state to congress.

Ib. Sec. 4. Elections, how conducted.

§ 11. Immediately upon the close of the elections in each county, the presiding officer at each place of election shall, in the presence of the inspectors, proceed to count in a public manner, the ballots, and shall keep an account in writing, of the number of votes each candidate or person voted for shall have, and in presence of the inspectors, cast up the scrolls, and make a correct statement of the number of votes given thereat, for each candidate or person voted for in each county; which shall be certified by the sheriff or other persons appointed to conduct the elections, and a majority of the inspectors.

Ib. Sec. 5. Managers shall make returns to the sheriff within two days after the election.

§ 12. The managers of the several election precincts in each of the counties composing the several election districts throughout this state, where counties have more precincts than one, shall make returns to the sheriffs at the court-houses or seats of justice in their respective counties, within two days thereafter, and the managers aforesaid shall return all the tickets so counted out, into the election box, together with the clerks' lists of votes sealed up, to the principal managers at the court-house in their respective counties; and it shall be the duty of the said managers, to keep said election boxes thus returned to them, for the space of sixty days, at the end of which time, the said votes shall be destroyed by the managers of the elections held at the court-houses in each county; unless notice shall be given to said managers, that some part or parts of said election will be contested; in that case, it shall be the duty of said managers to preserve the same.

Votes to be destroyed unless election is contested.

[a 1828.—(11) Sec. 2] Mode, place, and time of examining and comparing the polls in the several counties of each district.

[a]The sheriffs or other returning officers of the counties of each district, shall meet on the third Monday of September, next after each election, at the court-house of the county first mentioned in their respective districts; and when said sheriffs or other returning officers shall meet, the polls for the different counties shall, by said sheriffs or other returning officers, (as the case may be,) in the presence of two justices of the peace, who are to be summoned by the sheriff or other returning officer of the county where they shall meet for that purpose, be examined and compared, and a certificate under the hands and seals of said returning officers shall be given to the candidate in each district, for whom the greatest number of votes shall have been given in each district: but if two or more candidates shall have an

Certificate to the candidate elected.

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ty *first named in the district,*—and the act of 1828, gives the casting vote to the returning officer of that county. But the sheriff of the county first named was then also the returning officer *for that district.* By the act of 1832, this is not the case;—and although the centrality of the county to which the returning officer for the district is assigned, as well in the present as the former law, certainly indicates an intention, that the polls should be compared *there,* yet the positive requisition of the acts of 1822 and 1828, would seem still to be left in full force.

Returning officer of first county to have a casting vote where the votes are equal.

equal number of votes, the returning officer of the first county in each district mentioned,[1] shall determine which of them shall be the representative, and a certificate thereof shall be given by the returning officers accordingly.

Ib. Sec. 8. Governor to commission those elected.

§ 13. When any person shall be duly elected representative under this act, and have obtained a certificate of his election, which shall be signed by a majority of all the returning officers of the district, the governor, on such certificate being produced to him, shall issue a commission, certifying his appointment as a representative of this state to the congress of the United States.

Ib. Sec. 9. Compensation of returning officers.

§ 14. Every sheriff or returning officer shall be allowed the sum of three dollars, for every day he shall necessarily attend, for the purpose of comparing said polls, and also the amount of his ferriages; which shall be paid by the treasurer of the state, on affidavit of the sheriff or returning officer aforesaid.

Ib. Sec. 10. Persons eligible.

§ 15. No person shall be eligible as a representative to congress from any of the aforesaid districts, who is not, at the time of his election, a resident citizen of the district in which he is elected.

Ib. Sec. 12. Vacancies, how filled.

§ 16. When any vacancy shall happen by death, resignation, or otherwise, in the representation of the people of this state, in the house of representatives of the United States, the governor of this state, or the person exercising the powers thereof, shall issue his writ or writs of election, to the sheriffs of the counties of which the congressional district is composed, commanding such sheriffs on a certain day therein particularly expressed, to hold an election to supply such vacancy; and such writs, so issued by the governor, shall be delivered to the sheriffs, to whom the same may be directed, at least thirty days before the day appointed for such election, who shall give public notice thereof throughout the county, at least twenty days before such election; and such elections shall be holden and conducted in the same manner as the general elections are, for electing representatives to the congress of the United States.

Acts consolidated.

Mode of Contesting Elections.

1830—(10) *Sec.* 1. How to commence contest of the election of member of the general assembly.

§ 1. When any person, being a qualified voter of the proper county or district, shall contest the election of any one who may be declared to be elected as a member to either branch of the general assembly of this state, it shall be his duty to give the person, whose election he disputes, a notice in writing, setting forth the grounds for such contest; which notice shall, by the sheriff, coroner, or some constable of the proper county, be served personally upon the party whose election is contested, or a copy thereof left at his usual place of residence, within thirty days after the day upon which said election shall have been holden.

1827—(27) *Sec.* 2. Mode of taking testimony.

§ 2. The evidence which may be desired by either party in the prosecution or defence of any contest as aforesaid, shall be taken by deposition as follows:—the party wishing the evidence of any witness, shall apply to a justice of the peace of the county where the witness resides, for a subpœna to said witness, to appear before him or any other justice, at a certain time and place not less than five days from the issuance thereof; of which time, place, and object, said justice shall notify the opposite party at least five days.

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[1] See the note on the preceding pages.

§ 3. Notices to take depositions by either party, may be served by the sheriff, coroner, or any constable of the proper county, by leaving a copy at the usual place of residence of the party against whom the testimony is to be used.

1830—(10) Sec. 2. Notice to take depositions, how served.

§ 4. Any justice of the peace before whom a witness may be summoned for the purpose aforesaid, shall take down in writing all that the witness deposes in relation to the matter at issue, and also the questions that may be propounded by either party or his attorney, and the answers thereto; and shall, after filing away a true copy of the whole deposition in his office, carefully seal up and transmit the original by mail, to the president of the senate, or the speaker of the house of representatives, as the case should be, at the seat of government.

1827—(27) Sec. 3. Justice to file a copy of the testimony in his office, and transmit the original to the seat of government.

§ 5. The deposition of any witness residing out of this state, may be taken in a contest as aforesaid, in the same manner they are now taken of a like witness, in suits at law.

Ib. Sec. 4. Witnesses residing out of the state.

§ 6. The aforesaid officers and witnesses, shall receive for their services and attendance under this act, the same fees and compensation now allowed them for similar services and attendance in other cases, which fees and compensation shall be paid by the party contesting.

Ib. Sec. 5. Compensation of officers and witnesses.

§ 7. It shall be the duty of the returning officer, within ten days after any election, at the request of any person contesting an election, or desirous of contesting the same, to cause a true copy of the list of voters and the number of votes for each candidate to be made out, certified, and signed by him, and delivered to the person requesting the same, and for which he shall have a right to demand and receive twelve and one-half cents for each hundred words contained in said copy, from the person for whom it is made, before he shall be compelled to deliver the same; and any returning officer who fails or refuses to comply with this duty shall, on conviction, be liable to be indicted and fined in such sum as a jury shall assess, not less than five hundred dollars.

1830—(10) Sec. 4. Returning officer to furnish contesting party with a list of voters.

Penalty for refusing.

§ 8. When any election shall be holden either for a justice of the peace, or a constable, within the limits of any captain's company, in the several counties in this state, it shall be the duty of the persons holding such election, to retain in their possession, sealed up and secured, the tickets or votes given in at such election, for the space of fifteen days; and should notice be given to them within that time, by any of the candidates, that the election will be contested, then to make return of all the tickets or votes, given in at any such election, to the clerk of the county court, who shall keep the same, together with their certificate of the person elected, for the space of fifteen days, in order that said elections may be contested by any one being a candidate: *Provided*, That if the notice as aforesaid should not be given to the persons aforesaid, within the period aforesaid, it shall be their duty to destroy the tickets or votes, as is now in other cases prescribed by law.

1823—(13) Sec. 1. Elections of justice and constable.

When election is contested, the managers to preserve the votes, and return them to clerk of county court.

§ 9. When any election for justice or constable, as aforesaid, shall be contested, the person or persons contesting the same, shall, within the said fifteen days, notify the clerk of the county court in writing, of such his intentions:—it shall be the duty of the clerk to issue a summons to all the candidates offering either to fill justices' places or constables', as the case may be, requiring them to appear on a certain day in said county court, and show cause, if any they have, why the certificate of the election should not be returned, as is now required by law.

Ib. Sec. 2. Party contesting to notify clerk, and clerk to notify the other candidates.

Ib. Sec. 3. Judge of county court and two justices to decide the election.

§ 10. It shall also be the duty of the clerk to issue a summons to any two justices of the peace, requiring them to attend on the same day, with the candidates, and to sit with the judge of the county court; who, or a majority of whom, shall have full power to hear and determine, whether the said election has been legally or illegally conducted; and if, in their opinion, such election has been lawfully conducted, they shall direct the clerk to send on a certificate to that effect, certifying to the governor, the person duly elected; and should they determine the election to be void, upon a full hearing of all the facts and circumstances, they shall order the clerk to certify the same to the captain in whose company the election was held, who shall thereupon order a new election.

Acts consolidated.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

1827—(29) *Sec.* 1. Elections every fourth year on 2d Monday in November.

§ 1. THERE shall be held in each county in this state, an election for electors of president and vice-president of the United States, on the second Monday of November next,[1] and on the second Monday of November, every fourth year thereafter; which election shall be held in the same manner, at the same places, by the same officers, and under the same rules and regulations as the elections for members of the general assembly.

1823—(21) *Sec.* 2. Who entitled to vote, and where. a 1832—(22) *Sec.* 2. & 3. To elect such members as the state is entitled to.

§ 2. The persons qualified to vote for members of the general assembly, shall be entitled to vote at such election to be held as aforesaid: *Provided however*, They shall be entitled to vote in any county in this state, [a]and may elect such number of electors as the state shall by law be entitled to, at the time of holding such election; and should any ticket contain more names than the number of electors to which the state shall be then entitled, the persons first named in such ticket, constituting the requisite number, shall be considered the only persons voted for.

1823—(21) *Sec.* 4. Sheriff and managers to cast up the votes.

§ 3. The sheriff of each county, or other officer duly qualified, shall, with the managers of said election, within two days after holding the same, ascertain by faithful addition and comparison, the number of votes given for every person who shall be voted for as an elector, and shall reduce the same to writing in words and not in figures; and the said sheriff, or other returning officer shall, under his hand and seal, certify the same in substance as follows, to wit:

Form of sheriff's certificate.

"I, A. B., sheriff, (or returning officer, as the case may be) do hereby certify that an election was held on the second Monday of November, eighteen hundred and   for electors of president and vice-president of the United States, agreeably to law; and the following contains a true statement of the votes of the county of   for the following persons as electors for the state of Alabama, to wit: for A. B.   votes; for C. D.   votes; (and so on, to the number voted for:) Given under my hand and seal, the   day of   in the year of our Lord, one thousand eight hundred and   ."

Ib. Sec. 5. Return, when and to whom made. Penalty for failure.

§ 4. The said sheriff or other returning officer shall, within twelve days thereafter, deliver, or cause to be delivered his return and certificate made as aforesaid, to the governor or secretary of state, at the seat of government, under the penalty of one thousand dollars, to be recovered by action of debt, in any court having jurisdiction, in the name of the governor: which action shall be brought by the attorney-general or solicitor in whose circuit such returning officer so failing shall reside.

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[1] *i. e.* November, 1828; the act being passed in December, 1827.

§ 5. The governor shall, in the presence of the secretary of state, comptroller, and treasurer, or either of them in the absence of the others, examine and count all the votes given and returned for electors of president and vice-president of the United States, and forthwith proceed to give notice to said electors who shall be elected, by proclamation or otherwise.

Ib. Sec. 7. Governor to examine returns and give notice of election.

§ 6. Each sheriff or returning officer, shall be allowed for his services, the same that such officers are allowed for making returns of members of congress.

Ib. Sec. 8. Sheriff's compensation.

§ 7. The electors so chosen shall meet at Tuscaloosa, on the first Wednesday in December, 1828, and give their votes in such manner as is prescribed by the laws of the United States: and in like manner, the electors chosen every fourth year thereafter shall meet and vote as prescribed in the first clause of this section. [b]Where the whole number of electors shall not attend at the place appointed for giving in their votes on the day of election, it shall be the duty of those in attendance, before they proceed to vote, to appoint so many additional electors as may be absent, either by death, refusal to act, removal from the state, or any other cause:—and the electors so appointed, shall proceed to vote in the same manner as if elected by the people.

1827—(29) *Sec.* 2. Electors, when and where to meet and vote.

[b 1832—(33) *Sec.* 1.] Those attending may fill vacancies.

§ 8. Each elector of president and vice-president of the United States shall be entitled to receive four dollars for every day's necessary attendance at the seat of government, and four dollars for every twenty miles travelling to and from the same; and in that proportion for a shorter distance; to be paid out of any moneys in the treasury not otherwise appropriated.

1824—(12) *Sec.* 1. Electors' compensation.

ENUMERATION AND APPORTIONMENT.

§ 1. The general assembly shall, at their first meeting, and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the state, and the whole number of the representatives shall, at the first session held after making every such enumeration, be fixed by the general assembly, and apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective numbers of white inhabitants; and the said apportionment when made, shall not be subject to alteration, until after the next census shall be taken.

Con. Ala.—Art. 3. *Sec.* 9. Enumeration, when and how made.

Apportionment of representation.

§ 2. The general assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the state into the same number of districts, as nearly equal in the number of white inhabitants as may be, each of which districts shall be entitled to one senator and no more: *Provided*, That the whole number of senators shall never be less than one-fourth, nor more than one-third, of the whole number of representatives.

Ib. Sec. 10. Senate apportioned.

§ 3. When a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

Ib. Sec. 11. Senatorial districts.

§ 4. The representatives of the several counties, in this state, shall be apportioned at a ratio of twenty-one hundred and fifty white inhabitants to a representative, and shall be apportioned among the several counties, in the following manner, to wit:—to the county of Jackson,

1828—(9) *Sec.* 1. Ratio.

Apportion

ment of representatives to the several counties.

four representatives; to the county of Madison, five; to the county of Lauderdale, three; to the county of Limestone, three; to the county of Franklin, two; to the county of Lawrence, three; to the county of Morgan, three; to the county of Blount, two; to the county of Marion, and that part of Walker county taken from Marion, two; to the county of St. Clair, two; to the county of Jefferson, and that part of Walker taken from Jefferson, two; to the county of Fayette, one; to the county of Tuscaloosa, and that part of Walker taken from Tuscaloosa, four; to the county of Pickens, one; to the county of Shelby, two; to the county of Bibb, two; to the county of Greene, three; to the county of Perry, three; to the county of Autauga, two; to the county of Dallas, three; to the county of Montgomery, three; to the county of Wilcox, two; to the county of Marengo, one; to the county of Mobile, two; to the county of Clarke, one; to the county of Monroe, three; to the county of Butler, one; to the counties of Conecuh and Covington, two; to the county of Pike, two; to the counties of Henry and Dale, one; to the county of Baldwin, one; and to the county of Washington, one.

Ib. Sec. 2. Apportionment of senators.

§ 5. The counties of Mobile, Washington, and Baldwin, shall form one senatorial district; the counties of Monroe and Clarke, one; the counties of Conecuh and Butler, one; the counties of Pike, Henry, Covington and Dale, one; the counties of Wilcox and Marengo, one; the county of Perry, one; the county of Dallas, one; the county of Montgomery, one; the counties of Bibb and Shelby, one; the counties of St. Clair and Blount, one; the county of Madison, one; the county of Jackson, one; the county of Lauderdale, one; the county of Limestone, one; the county of Lawrence, one; the county of Franklin, one; the county of Morgan, one; the county of Tuscaloosa, one; the counties of Jefferson and Walker, one; the counties of Pickens, Fayette, and Marion, one; the county of Greene, one; and the county of Autauga, one; each of which districts shall be entitled to one senator and no more.

Ib. Sec. 3. Returning officers.

§ 6. The sheriffs of the counties of Mobile, Monroe, Conecuh, Pike, Marengo, Bibb, Jefferson, St. Clair, and Fayette, shall be the returning officers of their respective districts, and the sheriffs of the other counties of said districts, shall make returns to said returning officers, within ten days after each senatorial election.

ESCAPE.

1812—(16). No judgment against officer for an escape, unless wilful.

§ 1. No judgment shall be entered against any sheriff or other officer, upon any suit brought upon the escape of any debtor in his or their custody, unless the jury who shall try the issue in the cause, shall expressly find that such debtor or prisoner did escape, with the consent, or through the negligence of such sheriff, or other officer or officers, or that such prisoner might have been retaken, and the sheriff and his officers neglected to make immediate pursuit.

1824—(11) *Sec.* 1. Judges to charge grand juries respecting escapes.

§ 2. The judges of the circuit courts in this state, are hereby required, at each term of the circuit court in each and every county, to give particularly in charge to the grand jury, to inquire if any escape has been permitted, either negligently or voluntarily, by any jailer or prison keeper, within their county, and to present the same.

Ib. Sec. 2. The proof required.

§ 3. In all cases of presentment or indictment for escapes, the proof of a legal commitment, and the escape, shall be sufficient to throw the burthen of proof, for exculpation, on the defendant.

See "Crimes and Misdemeanors."—§ 33.

ESCHEATS AND ESCHEATORS.

§ 1. The estate, both real and personal, within this territory, of persons who have died intestate, or who may hereafter die intestate, leaving no lawful heir or heirs, shall be considered as escheated to the Mississippi Territory.

1816—(5) What property shall escheat.

§ 2. Each person who is now, or may hereafter be the judge of any county court within this state, is hereby appointed an escheator for the county, of the county court of which he is, or may be the judge, during his continuance in such judicial office; who shall execute his office of escheator in proper person, and not by deputy; [a]and the duties of escheator are hereby annexed to those of the judges of the county courts, *ex officio*, and under the same official sanctions and obligations.

1823—(18) *Sec.* 1. Judges of county courts appointed escheators. [a 1824—(4) Sec. 1.]

§ 3. Where it shall appear that any person has died without will, and without heirs, leaving property behind, it shall be the duty of the escheator of the county where the property may be found, to issue his notification of such supposed escheated property, to the judge of the circuit court, at least two months previous to the meeting of said court in such county; and the judge presiding at such court, shall cause the jury (being first sworn) to proceed and make a true inquest of all such supposed escheated property, both real and personal, which by the escheator shall be subjected to their investigation, and a true verdict make thereon; whereupon the judge of the court aforesaid, shall certify the same, under his hand and seal, to the escheator, who shall record the same in a book to be by him kept for that purpose; and shall return the original, within two months after the date thereof, into the office of the clerk of the said circuit court, to be there filed and kept as a record of the said court.

Ib. Sec. 4. Escheator to notify judge of the circuit court of escheated property. Proceedings on inquest.

§ 4. On returning the inquest into the office of the clerk of the court aforesaid, the clerk shall thereupon cause to be advertised, in one of the public gazettes of this state, the first week in every month, for six months, the particular description of the property, real and personal; the name of the person last seized and possessed; and the supposed time of his or her death, together with the part of the world in which he or she was known or supposed to be born, and requiring his or her heirs, or others, who may claim under him or her, to appear and make claim; and if no person shall appear and make right and title to the same within twelve months after the expiration of the time prescribed for advertising the same, the clerk of the said court shall issue process, to be signed by the judge of the said circuit court, to the escheator, pronouncing the said property, both real and personal, to be escheated and vested in the state, and directing him forthwith to sell and convey the same according to law.

Ib. Sec. 5. Property to be advertised, and no person appearing to claim, may be

§ 5. As soon as escheated property, either real or personal, shall be vested as aforesaid in this state, the escheator shall advertise the sales thereof in one of the public gazettes of this state, and also in two or more public places in the county, in which the property may be found, giving six weeks public notice of the time and place of sale; and shall at the time and place advertised, sell the said property on a credit of twelve months; and shall moreover take good and sufficient security for the purchase money, and a mortgage of the property, before the title to the said property shall be altered or changed; and it shall be the duty of every such escheator, to pay into the treasury of this state, the proceeds of every such sale, after deducting for his own use, the commission hereinafter allowed to him, as a compensation for his ser-

Ib. Sec. 6. sold. Proceeds to be paid into the state treasury.

vices, on all moneys received by, and paid to him, on account of such sales, and the necessary expenses thereunto attached.

Ib. Sec 7.
Claimant to have possession of the property, on giving security.
If not claimed, to be rented out.
Proviso.

§ 6. Any person or persons without delay, shall be heard on issue to be made up in the circuit court, on a petition setting forth his, her, or their right; and the said property, either or both real and personal, shall be committed to him, her, or them, if he, she, or they shall show good evidence of his, her, or their title to hold until the right shall be found for the state or the claimant, such claimant finding sufficient security to prosecute his, her, or their suit with effect, and without delay, and to render to the state the yearly value of such property, if the right be found for the state; and where no claimant shall appear to make title as aforesaid, the escheator shall rent out the escheated property, if the same can be done with advantage to the state, until the process of escheat shall be concluded, and the property sold: *Provided*, That if any suit for property supposed to be escheated, shall be prosecuted by any escheator, and the jury before whom such trial shall he had, shall think there is no probable cause, the court before whom the same shall be tried, shall award to the party aggrieved, his, her, or their reasonable and legal costs; to be paid out of any funds arising under or by virtue of this act.

Ib. Sec. 8.
Escheators' duty where escheated property is held by executor or administrator.
Treasurer's duty in such case.

§ 7. Where money or other personal estate shall be found in the hands of an executor, or administrator, being the property of any person heretofore deceased, or hereafter dying and leaving no person entitled to claim according to the statute of distribution, and without making distribution of the same, the escheator of the county where such chattels shall be found, shall and may in behalf of the state, sue for and recover, either at law or in equity, any such money or other personal estate, and pay the money which he may receive, or which may arise from the sale of any other personal estate which may come into his possession, by virtue of any such suit, into the treasury of this state; and the escheator shall advertise the sale of any such personal property, which may come into his possession, for two weeks, in one of the public gazettes of this state; and also in two of the most public places in the county in which the sale is to be made; and shall sell the same for cash at public auction, at the time and place so advertised. And the treasurer of this state for the time being, shall advertise the payment so made by any escheator into the treasury, in one of the public gazettes of this state, once in every month for six months, in like manner as escheated property is hereinbefore directed to be advertised, and if no person shall appear and make good title to such personal estate within twelve months after the expiration of the time prescribed for advertising the same, other than as executor, administrator, or their legal representatives, then the money which may have been recovered by the escheator, and the money arising from the sale of any such personal estate, shall become vested in, and applied to, the use of the state.

Ib. Sec. 9.
Grants, &c., not to bar the claims of the state.

§ 8. Any possession, grant, conveyance, or any other cause or title, shall not preclude or hinder the state from making inquest or sale, after the manner hereinbefore prescribed, of all such property, both real and personal, as has heretofore escheated to the state, or may hereafter escheat by the death of the person last seized or possessed, without will and without heirs.

Ib. Sec. 10.
Rights of creditors, &c., not prejudiced.

§ 9. Nothing herein contained shall prejudice the rights of creditors, or other individuals having claims or legal titles, or who shall be under the disabilities of infancy, coverture, duress, lunacy, or being beyond the limits of the United States, until three years after such disabilities shall be removed.

§ 10. Each of the said escheators shall, as a compensation for his trouble, costs and charges, in discharge of his duty, be entitled to receive a commission of eight per cent. out of all moneys which, in virtue of this act, shall be paid by him into the treasury; and where any person or persons shall appear and make title to lands or personal estate, after office found by the jury, the circuit court shall have power to make an allowance of such reasonable costs and charges, as the escheator hath sustained in promoting the claim of the state, except in cases where he had already received his compensation.

Ib. Sec. 11. Escheator's compensation.

§ 11. If any escheator shall fail to do the duty required of him by this act, or any loss or damage shall accrue to this state by his misconduct or fraudulent practices, such escheator shall be responsible for all such loss or damage; and the circuit court of the county wherein such escheator resides, shall have power and authority to order a prosecution in the name of the state; and the jury shall try the fact, and judgment shall be rendered against such escheator for any damages which the jury may assess, together with the costs; and further, no escheator shall, directly or indirectly, either by himself or any person whatsoever, purchase, or be concerned with any person or persons in purchasing, any escheated property, without being subject and liable to the payment of five thousand dollars: to be sued for and recovered in any court of record, one-half for the benefit of the informer, who shall sue for and recover the same, and the other half for the use of the state.

Ib. Sec. 12. Escheators failing to do their duty may be prosecuted.

Penalty for being concerned in the purchase of escheated property.

ESTATES OF DECEASED PERSONS.

§ 1. When any person shall die, possessed of goods and chattels or personal estate, not bequeathed, the same shall descend to and be distributed among his or her heirs, in the same way and manner, that real estates not devised descend by this act:[1] *Provided*, that the goods and chattels, or personal estate of any person deceased, whether testator or intestate, shall stand chargeable with the payment of all the just debts and funeral expenses of the deceased, and the charges of settling the said estate; and after the payment thereof, the surplusage, in case of intestacy, shall be decreed by the orphan's court, one-third thereof to the widow of the deceased person, unless the intestate died without children, or the descendants of them: in which case, she shall be decreed one half thereof for ever:[2] and the lands, tenements, and hereditaments of the testator or intestate, shall stand chargeable with all the debts of the deceased, over and above what the personal estate shall be sufficient to pay as aforesaid: saving to the widow her dower in all cases, as is before provided.

1806—(1) *Sec.* 27. Personal estate how disposed of, &c.

Lands chargeable with the debts of the estate.

§ 2. When the estate, both real and personal, of any person deceased, shall be insolvent, or insufficient to pay all just debts which the deceased owed, the said estate, both real and personal, shall be distributed to and among all the creditors, in proportion to the sums to them respectively due and owing: saving that debts due for the last sickness, and necessary funeral expenses of the deceased, are to be first paid: and the executor or administrator shall exhibit to the orphans' court, or chief justice thereof, (before any debts paid to any

Ib. Sec. 33. Estates of persons altogether insolvent to be distributed among the creditors in proportion. Priority of certain debts.

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[1] See "Descents."

[2] If there be any children, the widow is entitled to a child's part of the personal estate, which shall not, in any case however, be less than one-fifth of its clear value.—See "Dower."

Commissioners to be appointed to audit claims.

Commissioners to give notice to creditors.

Limitation of claims.

Court shall order distribution to the creditors.

Creditor may appeal from commissioners to referees.

Suits against executors, &c., suspended and prohibited, for 6 months,

and after report of insolvency.

Exceptions.

Liability of executors, &c.

creditor, except as aforesaid,) an account and statement, as is directed in the twenty-eighth section of this act:[1] including also the lands, tenements, and hereditaments of the testator or intestate. And if it appear to the said orphans' court, that such estate is insolvent, then, after ordering the lands, tenements, and hereditaments of the testator or intestate to be sold as aforesaid, they shall appoint two or more fit persons to be commissioners,[2] with full power to receive and examine all claims of the several creditors of such estate; and the said commissioners shall cause the times and places of their meeting to attend the creditors, for receiving and examining their claims, to be made known, by causing notifications to be posted up in such public places, and published in such newspaper or papers, as the orphans' court, or chief justice thereof shall direct: and six months, and such further time, (as the circumstances of the estate may require,) not exceeding eighteen months, shall be allowed by the said court to the creditors, for bringing in and proving their claims before the said commissioners; at the end of which limited time, the said commissioners shall make their report, and present on oath a list of all the claims that shall have been laid before them, with the sums they shall allow on each respective claim, to the said orphans' court. And the said court shall order just recompense to the said commissioners out of the deceased's estate. And the debts due for the last sickness, and necessary funeral expenses, being first deducted, the said court shall order the residue of the estate, both real and personal, (the real estate being sold according to law,) to be paid and distributed by the executor or administrator, to and among the creditors, who shall have made out their claims, with the commissioners as aforesaid, in proportion to the sums unto them respectively due and owing: *Provided*, That notwithstanding the report of any commissioner, the creditor whose claim is wholly or in part rejected, or any executor or administrator, who may be dissatisfied with such report, on a particular claim, may, for good and sufficient cause shown by the said creditor, executors, or administrators, to the said orphans' court, have the said claims referred by the said court to referees, whose report and award thereon, returned to the next term of the said court, and approved of, shall be final and conclusive. And to the end, that the executor or administrator may have an opportunity to ascertain the situation of the estate of the testator or intestate, no suit or action shall be commenced or sustained against such executor or administrator, in such capacity, till after the expiration of six months from the time of proving the will of the testator, or of granting letters of administration on the estate of the deceased. Nor shall any suit or action be commenced or sustained against him, after the estate of the testator or intestate is represented insolvent: *excepting however*, in all cases, actions for debts due for the deceased's last sickness and funeral expenses: *excepting also*, that if the executor or administrator, having objections to the claim on which any action (other than those last mentioned) may be brought, shall consent to have such claim settled by action at law: in such case, the judgment of the court shall determine the claim, and be reported by the commissioners as such. Every executor or administrator, after final apportionment of such distribution among the creditors of the testator or intestate as aforesaid, shall be liable to the creditors for their respective shares in such distribution. And if any debtor shall not make out his claim with the commissioners within the time of their commission, or before referees, or at common law, in the manner this act provides, he shall be for ever barred of his debt or demand; unless such creditor shall find other estate of the deceased, not inventoried or accounted for by the executor or administrator before distribution.

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[1] A just and true account of the personal estate and debts.—The section referred to has been superseded, and is omitted.

[2] The duties assigned the commissioners in this section, in auditing claims against insolvent estates, are required, by act of June 14, 1821, to be performed by the judges of the county courts, with leave to appoint commissioners, if necessary.—See § 7.

Claims, when barred.

§ 3. Any creditor, whose debt is not due, may exhibit it to the executor or executors, administrator or administrators, as if it were due, and thereupon shall be considered as a creditor under this act; and shall receive a dividend of the said testator or intestate's estate; deducting a rebate of legal interest, for what he shall receive on such debt, to be computed from the actual payment thereof, to the time such debt would have become due.

Ib. Sec. 34. Debts not due may be exhibited.

§ 4. The commissioners appointed to receive and examine the claims of the creditors to the estate of any person deceased, when reported insolvent, are hereby authorized and empowered, when judged expedient by a majority of them, to examine on oath or affirmation, any creditor, touching the truth of his or her claim; and may thereupon inquire of such creditor the truth of any writing, demand, or the charges in any account exhibited as a claim against such insolvent estate; and whether the same, and every part thereof, remains actually due and unpaid; and may make such other questions relative thereto, as shall be material, and tending to discover the truth of such claim: and the said commissioners, or either of them, are hereby authorized and empowered, to administer such oath or affirmation. And if any person, who shall have taken such oath or affirmation, (the same having been duly administered as aforesaid,) shall thereupon wilfully and corruptly make any false answer or answers to any question or questions, material to the determination of the truth of the claim, in proof of which, such oath or affirmation shall have been taken, and shall be thereof duly convicted, he or she so offending shall be adjudged guilty of wilful and corrupt perjury, and be liable to the pains and penalties thereof.

Ib. Sec. 36. Commissioners may examine claimants on oath.

Penalty for false swearing.

§ 5. If the commissioners appointed by the orphans' court of any county to receive and examine claims against the estate of any deceased person which has been by the orphans' court declared insolvent, shall fail to make their final report within the time limited by law, it shall be the duty of such orphans' court to make new appointments, or extend the time for the said commissioners to receive claims against such estate, and report thereon to such time as shall to such court seem reasonable and just, anything in the law to which this is an amendment to the contrary notwithstanding.[1]

1815—(6) *Sec.* 1. Commissioners in case of insolvency may be allowed further time, or new ones appointed.

§ 6. All claims against the estates of deceased persons shall be presented to the executor or administrator within eighteen months after the same shall have accrued, or within eighteen months after the passing of this act, or within eighteen months after letters testamentary or letters of administration shall have been granted to said executor or administrator, and not after; and all claims not presented within the time aforesaid, shall be for ever barred from a recovery: *Provided*, That the provisions of this section shall not extend to persons under age, feme covert, persons insane, or *non compos mentis*, to debts contracted out of this territory, nor to claims of heirs or legatees claiming as such.

Ib. Sec. 2. Claims against estate to be presented within 18 months, or barred.

Proviso.

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[1] The act of 1806—(1) Sec. 33—See § 2.

1821—(4) *Sec.* 21. Judges of county courts to perform the duties heretofore assigned the commissioners in case of insolvency. Creditors may file their claims in the clerk's office. Proceedings by commissioners.

§ 7. When the estate of any testator or intestate shall be reported insolvent, it shall be the duty of the judge of the county court to audit and determine on the accounts relating thereto, according to the regulations heretofore prescribed for commissioners in such cases. But in cases where the whole value of the assets according to the inventory and appraisement, shall appear to be less than one hundred and fifty dollars, it shall not be necessary (unless special cause therefor appear) to publish the notification in any gazette. Creditors may in all cases file the evidences of their claims in the clerk's office, and when, in the opinion of the judge, the case so requires, he may appoint commissioners as heretofore. The notification in such cases shall set forth the times and place appointed for the meeting of the commissioners; commissioners may be appointed, and if any of them refuse or fail to act, others may be appointed in their stead at any time before the report shall be agreed on. The commissioners, within three days before the time of their first meeting, shall apply at the clerk's office for such evidences of claims as may have been there filed, and shall return the same to the office within ten days after making up their report, or after the last time appointed for meeting. Exceptions to their report shall be heard and determined by the judge: if no report be returned by them, as required by the order, the judge shall appoint some time, not more than four weeks distant, at which he will examine and decide on the case, and notification thereof shall be made by the clerk, by advertisement at the door of the court-house.

1818—(14) *Sec.* 2. Discretionary with orphans' court to order sale of land or slaves.

§ 8. Whenever it shall be made to appear to the satisfaction of any county court, that the estate of any deceased person, or those who are entitled to inherit the same, will be less injured by a sale of the land, or part thereof, for the payment of debts, than by a sale of slaves, such court may, on the petition of any party interested, cause a citation to issue to all other interested persons, if in the county, or when that is not the case, by publication of notice in some paper, for such interested party or parties to appear at the next county court, and show cause if any they can, why sale of the land belonging to the estate so situated should not be ordered; and on the return of such citation made known, or proof of the publication of the notice hereby required, at the next term of such county court, if no cause be shown which the court deem sufficient, such court may order sale of such land, or whatever parts thereof, as may be necessary to satisfy debts, without a sale of negroes; and such sale shall vest in the purchaser, the same title in law or equity of which such decedent died possessed.

1826—(15) *Sec.* 4. Slaves to remain on the premises until the last day of December.

§ 9. If any person shall die after the first day of January, the servants and slaves of which he was possessed, whether held for life or other interest, and which were employed in making a crop, shall be continued on the plantation in the occupation of the decedent at the time of his death, until the last day of December following, and then delivered to those who shall have a right to demand the same; and their crops shall be assets in the hands of the executors and administrators, subject to debts, legacies and distribution; the levies and taxes, their tools, the expense of feeding them and their families to that time, and delivering them well clothed, being first deducted.

1826—(35) *Sec.* 2. Provisions laid in by the deceased not to be sold. When they may be divided.

§ 10. The dead victuals and liquors, which at the death of any testator or intestate, shall have been laid in for consumption in his family, shall not be sold by the executor or administrator, but shall remain for the use of such family, without account thereof being made. If, however, before their final consumption any child shall leave the family, such child shall have a right to carry with him or her an equal share of what shall then be on hand. Any live-stock which may be necessary for the food of the family, may be also killed for that use at any time before the sale, division or distribution of the estate.

1827—(26) *Sec.* 1. Executor, &c., not to sell property exempt from execution.

§ 11. All such property as now is, or hereafter may be exempt from execution, is hereby exempt from sale by an executor or administrator, and the family shall be suffered to retain the same.

1820—(20) *Sec.* 1. Division of estates when clear of debt.

§ 12. Whenever any person or persons die intestate, and leaving an estate not involved in debt so as to enforce a sale of any part of his or her estate, real or personal, it shall be the duty of the chief justice of the county court, or presiding magistrate, within three months after such estate is represented by the administrator or administratrix to be solvent, to appoint five commissioners, who, or a majority of them, shall, within six months after their appointment, being first duly sworn, make division and distribution of such estate, (reserving to the widow her dower in all cases,) among the legatees or other legal representatives of the deceased; and such division and distribution, shall be reduced to writing, and signed by said commissioners, and certified by the justices of the peace, or other magistrate, before whom said commissioners are sworn, and returned to the office of the clerk of the county court, or such other office as may be prescribed by law for that purpose, whose duty it shall be to record the same, as now required by law in cases of inventories: *Provided always*, That when such division and distribution cannot be equitably effected, without manifest injury to the legatees, or other legal representatives, in that case, such estate shall be exposed to public sale as heretofore.

1812—(11) *Sec.* 1. County court may order distribution in 18 months after administration granted.

[a 1833—(18) *Sec.* 1.]

Distributee to give bond and security.

§ 13. Any person entitled to the distribution of an intestate's estate, may at any time after the expiration of eighteen[a] months from granting the letters of administration, petition the county court, setting forth his claim, whereupon it shall be the duty of the said court to grant a rule on the administrator, administratrix, or administrators (as the case may be,) to make the distribution agreeably to law; but no administrator, administratrix, or administrators, shall be compelled to make distribution at any time, until bond and security be given by the person entitled to distribution, to refund a due proportion of any debts or demands, which may afterwards appear against the intestate, and the costs attendant on the recovery of such debt.

Ib. Sec. 2. No bond required after final settlement.

§ 14. Any person entitled to a legacy, or any estate by will, shall be entitled to the provisions of the foregoing section, as in case of administrators: *Provided*, That nothing herein contained, shall be so construed, as to compel any distributee to give bond and security as aforesaid, for his or her distribution of the estate of any intestate, after a final settlement shall have been made by the administrator or administratrix.

1822—(7) *Sec.* 1. Estate previously received may be brought into hotch-pot.

§ 15. When any of the children of a person dying intestate shall have received from such intestate in his or her lifetime, any real or personal estate by way of advancement, and shall choose to come into the partition of the estate with the other parceners, such advancement both of real and personal estate, or the value thereof, shall be brought into hotch-pot with the whole estate, real and personal descended; and such party bringing into hotch-pot such advancement as aforesaid, shall thereupon be entitled to his, her, or their portion of the whole estate so descended, both real and personal.

1828—(1) *Sec.* 2. Property brought into hotch-pot, how valued.

§ 16. When one or more of the heirs of any deceased intestate shall have received property of the ancestor in his lifetime, and shall wish to bring the same into hotch-pot, and the parties cannot agree as to the value of such property, the same shall be ascertained by testimony, and affixed by the judge of the county court of the county where letters testamentary or of administration shall have been granted; and it shall be his duty to do so, on the application of any person concerned in interest, on due notice to the other persons interested; and the said judge may at his discretion impannel a jury to assess the value of the property in question; and on the application of either party for a jury, it shall be the duty of the judge to cause the same to be impannelled; and in all cases, the value of the property at the time it was delivered, shall be fixed by said judge or jury, as the case may be; and the value so fixed, or the value agreed upon by the parties, shall be deducted from the share of such heir or heirs.

Its value to be deducted from the heir's portion.

Ib. Sec. 1.

Judgment creditors may subject lands to sale by *scire facias.*

§ 17. Whenever an executor of any deceased testator, or administrator of any deceased intestate, shall fail to apply to the county court for the sale of real estate, for the purpose of paying the debts due thereof, the judgment creditor may, upon filing a suggestion in the clerk's office in which judgment shall have been rendered, that real estate has descended to the heirs, and that sale of the same, or some part thereof is necessary for the satisfaction of said judgment, and that said executor or administrator has failed or refused to make application for the sale thereof, and setting out the names of said personal representative and heirs, sue out a *scire facias* against said executor or administrator and heirs, returnable to the next term of said court, requiring them, then and there, to show cause, why said plaintiff should not have execution against said real estate, and if sufficient cause to the contrary be not shown, execution shall be awarded against said real estate: (1) and all executors and administrators who fail to apply for leave to sell real estate three months after reporting the estate insolvent, shall be deemed guilty of a devastavit, and may be sued on their bond together with their securities. (2)

Penalty against executors and administrators for not applying for leave to sell lands.

Ib. Sec. 3.

Executor or administrator to pay interest on funds of the estate applied to his own use.

§ 18. When any executor or administrator shall apply any of the funds of the estate of his testator or intestate to his own private use, or shall have heretofore done so, he shall pay interest for the same: and in making their returns to the court, they shall state the sum so used, and the time at which it was applied, or shall expressly deny on oath, that they have so used any of the funds of their testator or intestate; and if any person interested in such estate shall controvert the statement so made, the same shall be determined by the judge of the county court, on evidence to be adduced; and if the judge deems it necessary he may, and if either party request it, he shall impannel a jury to decide on such disputed facts.

Ib. Sec. 4.

Publication when heirs are non-residents.

§ 19. When the heirs may reside without the limits of this state, the court shall direct publication to be made, as in the case of non-resident defendants in chancery.

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(1) On judgment against an administrator, lands descended cannot, by *sci. fa.* against the heirs, be made liable to execution. Bells et. al. *v.* Heirs of Robinson, 1 *Stewt. Rep.* 193.

(2) A decree of the county court, ordering the sale of the lands of an insolvent estate is evidence against third persons, concerning the lands sold. Such decree cannot be inquired into or impeached, while unreversed:—and is evidence, although the whole of the proceedings on the intestate's estate, be not shown. Richardson *v.* Hobart, 1 *Stewt. Rep.* 500.

EXECUTIONS.

The legislative enactments on the subject of executions, naturally divide themselves into the following heads, viz:

1. Issuance of, and proceedings under executions, generally.
2. Supersedeas of executions.
3. Priority and lien of executions.
4. Property exempt from execution.
5. Right of property executed.
6. Delivery bonds.
7. Sales under execution.
8. Proceedings against officers holding executions.

1. Issuance of, and Proceedings under Executions, Generally.[1]

1807—(21)

How executions may issue on judgments.

§ 1. All persons who shall recover any debt, damages, or costs, by the judgment of any court of record within this territory may, at their election, prosecute writs of *fieri facias*, *elegit*, and *capias ad satisfaciendum*, within the year, for taking the goods, lands, or body, of the person or persons against whom such judgment is obtained, in manner following: all such writs shall run in the name of [a]the State of Alabama, and bear teste by the clerks of the said courts respectively, shall be returnable to the first day of the next succeeding court,[2] so that there be always at least fifteen days between the teste and return of each of the said writs: *Provided*, That if the plaintiff shall desire an execution to issue returnable at a further day, the clerk shall issue the same accordingly, so as the day of such return be upon a court-day, within ninety days next after the teste thereof. The forms of the said several writs shall be as follows, *mutatis mutandis:*

(a Con. Ala. Art. 5, *Sec.* 17.)

(b Con. Ala. Art. 5, *Sec.* 17.)

Form of a *fieri facias*, in debt.

"[b]The state of Alabama, to the sheriff of   county, Greeting: We command you, that of the goods and chattels[3] of A. B. late of your county, you cause to be made the sum of   , which C. D. lately in our   court hath recovered against him for debt; also the sum of   , which to the said C. D. in the same court were adjudged for his damages; as well by reason of the detention of the said debt, as for his costs in that behalf expended; whereof the said A. B. is convicted, as appears to us of record; and that you have the said   before the judge of our said court, on the   day of   next, to render to the said C. D. of his debt and damages aforesaid; and have then and there this writ.

Witness," &c.

In assumpsit.

The same in case upon a promise—

As before, unto   "for his damages which he hath sustained, as well by reason of the non-performance of a certain promise and assumption, by the said A. B. to the said C. D. lately made,

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[1] The law in relation to executions issued by justices of the peace, is introduced at the conclusion of this division, except such parts of it as fell incidentally and more properly under the other divisions.

[2] They are required to be *returned* three days previously to the term of the court. See "Judicial Proceedings at Common Law,—Process."

[3] Lands, tenements, and hereditaments, are by act of December 23, 1812, made subject to the payment of all judgments, or decrees of any court of record in this state, and the clerks are required to frame the execution accordingly.—See § 18.

In trespass.

as for his costs by him about his suit in that behalf expended," &c. As before, unto " for damages as well by occasion of a certain trespass by the said A. B. to the said C. D. offered, as for his costs," &c.

If for the defendant, say,—

In covenant.

" For his costs about his defence in a certain action at the suit of the said," &c. As before unto " for damages, &c. by reason of a breach of a certain covenant between the said A. B. and C. D. lately made," &c.

(a Con. Ala. Art. 5, *Sec.* 17.)
Form of a *writ of elegit.*

" The state of Alabama,[a] to the sheriff of county, greeting: Whereas A. B. at our court, &c. before our judge held, hath recovered against C. D. the sum of , which to the said plaintiff was adjudged, for a certain debt or damages, (as before) and the said A. B. hath chosen to have delivered to him all the goods and chattels of the said C. D., saving only the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your county, to have and to hold the goods and chattels aforesaid, as his own proper goods, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof, the debt and damages aforesaid; therefore we command you, that you cause to be delivered all the goods and chattels of the said C. D., saving the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your county, whereof he, at the day of obtaining the said judgment, was seized, or at any time afterward, by reasonable price and extent, to have and to hold the said goods and chattels, to him the said A. B. as his own proper goods and chattels, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof, the debt and damages aforesaid; and that you certify to our said judge, under your own seal, and the seals of those by whose oath you shall make this extent and appraisement, how you execute this writ; the day of ; and have then and there this writ.

(b Con. Ala. Art. 5, *Sec.* 17.)
Form of a *capias ad satisfaciendum.*

" The State of Alabama,[b] to the sheriff of county, greeting: We command you, that you take A. B., late of your said county, if he be found therein, and him safely keep, so that you have his body before the judge of our court, &c. the day of next, to satisfy C. D. the sum of , which the said C. D. hath recovered against him for debt, also," &c. as before, in case, trespass, or covenant, as in the *fieri facias*.

Which said writs, so issued, shall be executed by the sheriff or other officer, to whom the same shall be directed, and shall be returned according to the respective forms hereafter mentioned.

Form of the several returns of a *fieri facias.*

" By virtue of this writ, to me directed, I have caused to be made the within mentioned sum of , of the goods and chattels[1] of the within named A. B., which said sum of , before the judge within mentioned, at the day and place within contained, I have ready, as that writ requires." Or:—" The within named A. B. hath no goods or chattels within my county, whereof I can make the sum of , within mentioned, or any part thereof." Or:—" By virtue," &c. " I have caused to be made of the goods and chattels of the within named C. D., the sum of , in part of the debt and damages within mentioned, and I do further certify that the said A. B. hath no more goods and chattels within my county, whereof at present I can make the residue of the said debt and damages, as by the said writ is required."

Return of writ of *elegit.*

" Inquisition indented, taken at , in the county aforesaid, the day of , in the year of our Lord, , before me, E. F., sheriff in the county aforesaid, by virtue of a writ to me directed, and to this inquisition annexed, and by the oaths of A. B. C. &c., good and lawful men of said county, who being charged and sworn, upon their oath do say, that A. B. in the said writ, to this inquisition annexed named, the day of the caption of this inquisition, was possessed of the goods and chattels following, as of his own proper goods, to wit: , of the price of , which I the said sheriff have caused to be delivered to the said C. D., to hold to him as his own proper goods and chattels, in part of satisfaction of his debt and damages aforesaid, in the said writ mentioned: *And further*, The said jurors upon their oath do say, that the said A. B. at the time of rendering the judgment aforesaid, was seized in his own demesne, of fee, of and in (here name the houses and lands) with the appurtenances, of the annual value, in all the issues beyond reprises, of dollars; acres of which, or thereabouts, are a true and equal moiety of all and singular the lands, tenements, and hereditaments whatsoever, in the county aforesaid, of the said A. B., which said moiety, I, the said sheriff, the day aforesaid, to C. D. in the said writ named, at a reasonable extent, have delivered, to hold to him and his assigns, as his freehold, according to the form of the act in that case made and provided, until he shall have levied the residue of the debt and damages aforesaid, as the writ aforesaid requires: *And further*, The said jurors, upon their oath do say, that the said A. B. at the time of giving the judgment aforesaid, had not, nor at the day of taking this inquisition hath, any other or more goods and chattels, lands or tenements, in the county aforesaid, to the knowledge of the jurors aforesaid; in testimony whereof, as well I, the said sheriff, as the jurors aforesaid, to this inquisition have severally put our seals, the day, year, and place above mentioned."

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[1] See the preceding note.

Return of a *capias ad satisfaciendum.*

"By virtue of this writ to me directed, I have taken the within named A. B., whose body before the judge within named, at the day and place within contained, I have ready to satisfy C. D., of the debt and damages within mentioned." Or:—"The within named A. B., is not found within my county."

If the first writ be not executed, another may issue.

§ 2. When any execution shall issue, and the party at whose suit the same is issued, shall afterward desire to take out another writ of execution, at his own proper cost and charges, the clerk may issue the same, if the first writ be not returned and executed; and where upon a *capias ad satisfaciendum*, the sheriff shall return that the defendant is not found, the clerk may issue a *fieri facias;* and if upon a *fieri facias* he shall return that the party hath no goods, or that only part of the debt is levied, in such case it shall be lawful to issue a *capias ad satisfaciendum* upon the same judgment; and where part of a debt shall be levied upon an *elegit*, a new *elegit* shall issue for the residue; and where *nihil* shall be returned upon any writ of *elegit*, a *capias ad satisfaciendum*, or *fieri facias* may issue, and so *vice versa;* and where one judgment is obtained against several defendants, execution thereon shall issue, as if it were against one defendant, and not otherwise.

Remedy of the *tenant by elegit*, in case of eviction.

§ 3. If any tenant by *elegit*, be evicted of his title in the lands, tenements, or hereditaments, which he holds by virtue of any extent thereof, by judgment had against him otherwise than by his own fraud or default, before satisfaction shall be made him for his debt, or damages and costs, he may have a writ of *scire facias* against the debtor, his heirs, executors, or administrators, and may thereafter sue out such other writ of execution for the residue of his debt, or damages and costs, as shall appear to remain unpaid, as if no execution had been theretofore issued.

Where lands have been omitted out of the extent, judgments, &c., not to be void.

§ 4. When any judgment or recognizance shall be extended, the same shall not be avoided or delayed, by occasion that any part of the lands or tenements extendible, are or shall be omitted out of such extent, saving always to the party and parties whose lands shall be extended, his and their heirs, executors, and assigns, his and their remedy for contribution against such person and persons, whose lands are or shall be omitted out of such extent, from time to time: *Provided nevertheless*, That this act, or anything therein contained, shall not be construed to give any extent or contribution against any heir or devisee, within the age of twenty-one years, during such minority of such heir or devisee, for or in respect of any lands to such heir or devisee descended or devised, further or otherwise than might have been made before the making of this act.

Proviso, as to infant heirs and devisees.

Proceedings in case of the death of the party in execution.

§ 5. If any person being in prison, charged in execution, shall happen to die in execution, the party or parties at whose suit, or to whom such person shall stand charged in execution for any debt or damages recorded, his or their executors or administrators may, after the death of the person so dying in execution, lawfully sue forth and have new execution against the lands and tenements, goods and chattels, or any of them, of the person so deceased: *Provided always*, That this act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit any such party shall be and die in execution, to have or take any new execution against any of the lands, tenements or hereditaments of such party dying in execution, which shall, at any time after the said judgment or judgments, be by him sold *bona fide* for the payment of any of his creditors at whose suit he shall be in execution, and the money paid, or secured to be paid to any such creditors, with their privity, in discharge of his or their debts, or some part thereof.

Discharge by privilege.

§ 6. If any person taken in execution, be delivered by privilege of either house of assembly, so soon as such privilege ceaseth, he shall return himself a prisoner in execution, or be liable to an escape.

On a debtor's removal beyond the jurisdiction of the court.

§ 7. When judgment shall be obtained in any court of record within this territory, for any debt or damages, and the person against whom such judgment shall be obtained, shall remove himself or his effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court where judgment was given, at the request of the party for whom the same was rendered, to issue a writ of *fieri facias*, or *capias ad satisfaciendum*, or any other legal or proper writ of execution, or attachment, for the nonperformance of a decree in chancery, (as the case may require,) in the form, and under the teste hereinbefore prescribed, and to direct the same to the sheriff of any county, or marshal of any corporation within this territory, where the defendant or debtor, or his goods shall be found; which said sheriff or other officer to whom the same shall be directed, is hereby empowered and required to serve and execute the same; and shall make return thereof to the court where the judgment was given, in the manner hereinbefore prescribed and directed.

Ib. Sec. 12.
Slaves not to be taken, if other property be shown, unless execution amt's. to 100 dollars.

§ 8. No sheriff or other officer, to whom any writ of *fieri facias* shall be directed, shall take in execution any slave or slaves, unless the debt and costs mentioned in such *fieri facias*, shall amount to the sum of one hundred dollars: *Provided*, There be shown to such sheriff or officer, by the defendant or any other person, sufficient other goods and chattels, of such defendant's, within the county of such sheriff or officer, upon which he may levy the debt and costs mentioned in such *fieri facias.*

§ 9. Where any slave or slaves shall be taken in execution, and sold, the names of such slaves shall be certified on the back of the execution, and returned to, and recorded among the records of the court where such execution shall issue.

Ib. Sec. 13. Names of slaves sold to be certified on execution.

§ 10. If the goods taken by any sheriff, or other officer, or any part thereof shall remain in his hands unsold, he shall make return accordingly; and thereupon the clerk of the court from whence the execution issued, may, and shall, if required, issue a *venditioni exponas,* to such sheriff or other officer directed, whereupon the like proceedings shall be had, as might and ought to have been had on the first execution; which writ of *venditioni exponas* shall be in the following form:

Ib. Sec. 14. If goods remain unsold, a *venditioni exponas* may issue.

"The State of Alabama,[a] &c. greeting: We command you that you expose to sale those goods and chattels of A. B. to the value of , which according to our command, you have taken, and which remain in your hands unsold, as you have certified to our judge of our court, to satisfy C. D., the sum of , whereof in our said court he hath recovered execution against the said A. B., by virtue of a judgment in the said court, and that you have," &c.

[a Con. Ala. Art. 5, *Sec.* 17.] Form.

§ 11. When any sheriff or other officer shall serve any writ of execution on slaves, horses, or other live stock, and the same shall not be immediately restored to the debtor on his executing a forthcoming bond,[1] it shall be lawful for such officers, and they are hereby required to provide sufficient sustenance for the support of such slaves or live stock, until such slaves or stock be sold, or otherwise legally discharged from such execution: and upon the return of any execution, the court shall, upon motion of the officer serving the same, settle and adjust what such officer shall be allowed for his expenses incurred by supporting such slaves or stock; and the said officer shall be allowed to retain the same out of the money arising from the sale of the said slaves or stock.

Ib. Sec. 15. Sheriff to provide for slaves, &c., taken in execution.

Court to allow necessary expenses.

§ 12. When any writ of *capias ad satisfaciendum* shall be levied on any debtor, it shall be lawful for such debtor to tender to the sheriff or other officer serving the same, slaves or personal property to the value of the debt and costs, for which such execution may be issued; which property the said sheriff or other officer shall receive, and proceed to sell, in like manner as is herein directed, in the case of goods taken in execution upon a writ of *fieri facias*, and shall thereupon discharge such debtor out of custody: *Provided always,* That if such property so tendered, shall not be sufficient to satisfy the debt or damages, and costs, or shall be under any lien or incumbrance, so that the whole cannot be sold, a new *capias ad satisfaciendum,* or *fieri facias*, at the option of the plaintiff, shall issue for any balance: and the clerk of the court from which such execution originally issued, shall, upon the return of the sheriff of the insufficiency or incumbrance aforesaid, issue a new *capias ad satisfaciendum* or *fieri facias,* if required: but where such property shall have been under any incumbrance, the debtor shall not be at liberty to tender slaves or personal estate, on a second *capias ad satisfaciendum* being served, or in case of a *fieri facias* issued in consequence of such return, to avail himself of the privileges of this act.

Ib. Sec. 18. Debtor may release his body by delivering property.

If the property tendered be insufficient, or incumbered, a new execution may issue.

Restriction.

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[1] See the 6th division of this title.

Ib. Sec. 20.
When the amount of sales exceeds debt and costs, the residue to be paid to the debtor.
Penalty, &c.

§ 13. Wheresoever, on a sale made under any execution, the amount of such sale shall exceed the principal, interest, and costs, the sheriff or other officer, shall pay such excess or surplus to the debtor, his executors, administrators, or agent; and if any sheriff or other officer shall fail or refuse to pay such surplus or excess, when required, such sheriff or other officer, his or their security or securities, his or their executors or administrators, shall, each and every of them, be liable to the like penalty and judgment in favor of the said debtor, as is prescribed and directed by law, in favor of the plaintiff against the sheriff, for not paying the principal, interest and costs, levied on an execution.

Ib. Sec. 21.
Where an injunction is obtained, the money shall be returned to the debtor.

§ 14. When any sheriff or other officer, under any execution, shall receive the whole or any part of the money for which the said execution was issued, and the person against whom such execution may have issued, his executors or administrators, shall obtain an injunction to such execution, or any part of the money mentioned therein, before the money received by such sheriff or other officer, is paid to the plaintiff, his agent or attorney, or his executors or administrators; in every such case, the sheriff or other officer, his executors or administrators, shall repay the person or persons against whom such execution issued, his or their executors, administrators, or agent, the money so received, or such part thereof as may be enjoined to the person having a right to demand the same; such sheriff or other officer, and their securities, his and their executors and administrators, and every of them, shall be liable to the like penalty and judgment in favor of the person, his executors or administrators, by whom the said injunction is obtained, as is directed by law in favor of the plaintiff, against the sheriff, for not paying money levied on an execution.

Ib. Sec. 34.
Proceedings after a final decree in chancery.

§ 15. After obtaining a final decree for lands, slaves, or money, or things of a specific nature, in any court having chancery jurisdiction, the clerk of such court shall, upon the request of the party obtaining such decree, issue any writ of execution, either a *fieri facias, capias ad satisfaciendum, habere facias possessionem*, or any judicial process which may now issue from any court of common law, according to the nature of the case, for carrying the said decree into effect; which writ shall issue in the name of the state of Alabama,[a] and bear teste and be signed by the clerk of the court; and all process so issued shall be executed and returned to the clerk's office from which the same issued, from term to term, on the return day thereof, by the officer or officers to whom the same shall be directed, and shall have the same operation, and possess the same force, to all intents and purposes, as similar process issued upon judgments at common law: the officer or officers to whom any such process is directed, shall be subject to the like penalties for misconduct or neglect, and the court shall exercise in this and in all cases relating to such process, the same powers as if the said process had issued upon a judgment obtained at common law: but nothing herein contained shall prohibit any person from proceeding to carry any order or decree in chancery into execution, in any manner of which he might have availed himself, before the passing of this act.

[a Con. Ala. Art. 5, *Sec.* 17.]

Ib. Sec. 38.
On elegit, defendant may elect lands to be taken.

§ 15. In all cases where the writ of elegit shall be sued out, the defendant or defendants shall have the election of the moiety of his, her, or their lands to be extended.

1807—(22)
Preamble.

Whereas divers persons residing in other states, governments, or dominions, possessed of lands, tenements, and hereditaments, in this territory, may have contracted, or may contract debts with the inhabitants of this territory, without having personal estate in the same, to satisfy such debts and damages:

Sec. 1. In what manner lands of non-residents are subject to execution.

§ 17. *Be it therefore enacted*, &c. That all process which heretofore issued against goods and chattels, shall hereafter issue against lands and tenements, in the same manner as against goods and chattels in the case of foreigners and non-residents; and the sheriff, upon such attachment, execution or other process, shall proceed to levy the same upon the goods and chattels of the defendant, in the first instance, if any there be; but if to the best of his knowledge, there be no such goods and chattels, or not sufficient to answer the plaintiff's demand, he shall execute the same upon the lands and tenements of such non-resident, to the amount of the whole debt; or of so much as may remain more than the value of the goods and chattels so found; and such lands and tenements shall be liable, under the restrictions aforesaid, to be sold to satisfy the judgment of the plaintiff; and he shall sell the same at the most public place in his county, after his having given at least forty days notice, by advertisement in the public gazettes, before the day of sale.

1812—(15) *Sec.* 9. Lands subject to execution from a court of record.

§ 18. Hereafter, lands, tenements, and hereditaments shall be subject to the payment of all judgments or decrees of any court of record within this territory, and the clerk of such court shall frame the execution accordingly; and in all cases, the sheriff or other officer levying such execution on real estate, shall give at least thirty days notice of the time of such sale; and the sale shall be at the court-house of the county in which such land may lie: *Provided*, The courts holden by justices of the peace, shall not be deemed courts of record, within the meaning and provisions of this act; and the sheriff or other officer selling any real estate, shall make a title to the purchaser, which title shall vest in the purchaser, all the right, title, and interest, which the defendant had in and to such real estate, either in law or equity.[1]

Ib. Sec. 10. Sheriff may accept other property, in lieu of that levied upon.

§ 19. It shall be the duty of every sheriff, if he has levied any execution on property, and advertised the same agreeably to law, if the debtor or debtors shall, on the day of sale, produce to the sheriff other property in lieu thereof, to cause the property so produced, to be offered for sale, in the same manner as if it had been originally levied upon.

1815—(12) *Sec.* 3. Clerk to endorse bill of costs on execution.

§ 20. The clerks of the several courts of this territory, shall endorse on all executions by them issued, the several items contained in the bill of costs, in intelligible words and figures. (1)

1818—(14) *Sec.* 4. Teste in vacation.

§ 21. All executions required to be issued on a return in vacation, shall bear teste on the return day of the last execution.

1819—(14) *Sec.* 16. Sheriff shall levy executions and pay over the money. Penalty.

§ 22. It shall be the duty of the sheriffs of the counties throughout the state, respectively, whenever any execution shall be placed in their hands, to proceed to levy the same, and make sale of the property thus levied on, in such times as by law is directed, and shall pay the amount obtained by such sale, to the party or parties entitled to the same, on the application of such party or parties, or within ten days thereafter, under the penalty of forfeiting six per centum per month, for every month such sheriff shall fail to pay over such money, collected as aforesaid.

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[1] The equitable title to real estate, can be made subject to the payment of debts only by suit in chancery.—See "Judicial proceedings in Chancery," § 12,—also § 69 of this title.

(1) An execution cannot be quashed because more costs are taxed than are due. The error may be corrected on motion to re-tax.—Anon. 2 *Stewt. Rep.* 228.

1819—(14) *Sec.* 18. Penalty for neglect of duties. Returning executions, &c.

§ 23. When any sheriff shall fail to perform the duties by this act required, the person or persons aggrieved, may move against such delinquent sheriff, and have judgment against such sheriff and his securities in office, for the amount he has failed to pay over as aforesaid, or for failing to return the execution in manner as above directed,[1] in the court from which such execution had issued, upon giving three days notice of such motion to such delinquent sheriff or his securities in office: *Provided however*, That time may be given to such delinquent sheriff to make his defence, upon good cause shown to the court before whom such motion may be made.

1811—(1) *Sec.* 2. Property of principal to be first levied on. Security to make affidavit.

§ 24. When an execution may issue against any principal and security, on any bill, bond, note, or other instrument, the sheriff, or other officer shall levy on the property of the principal first, if he has any property in the county where the security resides: *Provided*, The security make oath before some justice of the peace, that he is security on said bond, bill, note, or other instrument, which affidavit shall be filed by the sheriff or other officer with the execution.

1829—(14) *Sec.* 5. Sheriff to receipt for money paid, and specify the items on the execution.

§ 25. It shall be the duty of the sheriffs, coroners, and constables in this state, to endorse upon all executions and other process, by virtue of which they may have collected any moneys, the amount so received, specifying how much debt, how much interest, how much commission, and how much cost; and shall receipt every such defendant or defendants, to such execution or process, for said amount; specifying the several sums so received, so as to make the receipt to any such defendant or defendants correspond with any such officer's returns.

EXECUTIONS FROM JUSTICES OF THE PEACE.

1818—(14) *Sec.* 1. Circuit court may order sale of land levied on by a constable.

§ 26. Whenever it shall become necessary, for want of personal property, to levy an execution issued by a justice of the peace, on land, it shall be the duty of the officer levying such execution, to return the same to the next superior court of his county; and such court shall, on motion of the plaintiff, and it appearing by an exhibition of the proceedings before the justice, that the same have been regular, order a sale of such land, or whatever part thereof may be necessary to satisfy such execution.

1822—(21) *Sec.* 1. Execution directed to another county, to be certified by clerk of county court.

[a] *But see* § 29.

§ 27. Where any judgment is rendered by a justice of the peace, and the person against whom such judgment may be rendered, removes to another county, it shall be lawful for such justice to issue execution to any county in this state, against the property of the person against whom judgment is rendered; which execution shall be certified by the clerk of the county court:[a] and it shall be the duty of any legal officer of the county to which such execution may issue, to execute and make return of such execution, according to the mandate thereof, to the justice of the county from which execution issued.

1824—(17) *Sec.* 1. Such executions returnable from 30 to 90 days.

§ 28. Justices of the peace in issuing executions to counties, other than such as they may reside in, shall make the same returnable within any period of time, not less than thirty, nor more than ninety days.

Ib. Sec. 2. Justice may certify execution from another county.

§ 29. In all cases of executions running from one county to another, it shall be the duty of any justice of the peace of the county to which such executions may be directed, upon having the same presented for that purpose, and upon being satisfied of the hand-writing of the justice of the peace issuing such executions, to certify the same, which shall be sufficient evidence of the authenticity thereof.

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[1] The seventeenth section required sheriffs to return all executions not levied, or on which the money was not made, to the clerk's office by the first day of the next term. All writs and executions are now required to be returned, under a like penalty, at least three days previously to the term of the court to which they are returnable. See "Judicial Proceedings at Common Law,"—§ 119.

§ 30. So much of the sixteenth section of an act entitled "An Act to revise, consolidate, and amend the several acts relative to justices of the peace and constables," as makes it the duty of constables, for want of goods and chattels on which to levy an execution, to take the defendant's body, by virtue thereof, is hereby repealed.

1827—(38) *Sec.* 1. Constable not to take defendant's body for want of goods.

§ 31. It shall not be lawful for any justice of the peace to issue a *capias ad satisfaciendum*, unless expressly required by the plaintiff, his attorney, or agent; and it shall not be lawful for any constable to take the body of the defendant upon any execution, unless commanded thereby: and it shall be the duty of the constable to release the body when the defendant will point out property sufficient to discharge the demand with which he is charged in execution.

Ib. Sec. 2. Justice not to issue *ca. sa.* unless expressly required.

2. Supersedeas of Executions.

§ 32. If a *distringas* issue in detinue, the court for good cause shown, may direct it to be superseded, so far as it relates to the specific thing, and to be executed for the alternative price or value only, if fixed in the judgment, or if the same shall afterwards be fixed by a writ of inquiry.

1807—(21) *Sec.* 29. *Distringas* in detinue.

§ 33. The judges of the circuit courts, respectively, shall have power and authority in vacation, to supersede any execution, when it shall satisfactorily appear to them, or any of them, that the same shall have improperly issued from the clerk's office of any of the circuit courts of this state.[1]

1821—(30) *Sec.* 2. Judges may supersede executions improperly issued.

§ 34. Whenever an order for a supersedeas to an execution, shall be granted by any of the judges of the circuit courts, it shall be the duty of the clerk of the court to which it shall be directed, before issuing the same, to take a bond from the party in whose favor it is granted, with good and sufficient security, to be approved by said clerk, in double the amount for which the execution shall have issued, payable to the plaintiff or plaintiffs in said execution; conditioned to pay and satisfy to the said plaintiff or plaintiffs, the sum of money specified in said execution, together with interest and costs, in case the supersedeas shall be set aside, or be annulled.

1826—(6) *Sec.* 1. On granting supersedeas, clerk to take bond.

Condition.

§ 35. The said bond, in case the supersedeas be set aside or annulled, shall have the force and effect of a judgment against all the obligors, and execution may be taken out against them all for the sum of money for which the first execution shall have issued, together with lawful interest thereon, and the costs by the plaintiff or plaintiffs in the said execution, expended.

Ib. Sec. 2. Supersedeas annulled, bond to have the force of a judgment.

3. Priority and Lien of Executions.

§ 36. No writ of *fieri facias*, or other writ of execution, shall bind the property of the goods, against which such writ is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, coroner, or other officer, to be executed; (1) and for the bet-

1807—(21) *Sec.* 8. Goods bound from the delivery of the execution to the sheriff.

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[1] A similar power is given to the judges of the county courts by act of 1822. See "Judiciary—County Court,"—§ 8.

(1) The lien of an execution is discharged by an injunction. Barnes *v.* Baker & Sledge, *Min. Rep.* 373.

Penalty on officer holding execution, for not endorsing time of delivery.

ter manifestation of the said time, such sheriff, coroner, or other officer, his deputy or agent, shall upon the receipt of any such writ, without fee for doing the same, endorse upon the back thereof the day of the month and year when he received the same; and if two or more writs shall be delivered against the same person on the same day, that which was first delivered, shall be first satisfied. If any sheriff, coroner, or other officer, to whom any execution shall be delivered, shall fail or neglect to endorse thereon, the day of the month and year when he received the same, every such person, for every such failure, shall be liable, on a motion to be made before the court from whence the execution issued, to a penalty not exceeding fifteen per centum, upon the amount of said execution, if it be for money; and if it be for a specific thing, one hundred dollars, to the use of the party injured, upon giving ten days previous notice of such motion; and shall moreover be liable to the action of the party aggrieved, for all damages arising from such failure.

1828—(34) *Sec.* 1. Execution from justice of the peace, to bind property from the date of its levy. Constable's duty in satisfying different executions. To endorse the time of delivery.

§ 37. Executions issued by a justice of the peace shall operate as a lien on the property of the defendant from the time of the levy and not sooner; but if more than one execution shall come into the hands of the constable at the same time against the said defendant, if all cannot be satisfied, each shall be entitled to a ratable proportion of the proceeds: and if more than one execution shall come into the hands of the same constable against the same defendant at different times, then the one first delivered, shall be first satisfied: and to show the priority between different executions, the constable shall endorse on each the time of delivery, and whether it be the first, second, or third, &c. in hand, against the same party—and the lien so created by the levy of an execution by a constable, shall not be over-reached by the lien of any execution in the hands of the sheriff, not previously levied.

Ib. Sec. 2. Priority of lien between judgment creditors.

§ 38. The lien created by the delivery of an execution from a court of record to the sheriff, shall continue to bind the property of the defendant, as between different judgment creditors in the courts of record in this state, in the following manner, viz: If a term shall elapse after the return of the first execution, before an *alias* shall be sued out and delivered to the sheriff, the lien created by the delivery of the first writ of execution shall be cancelled and of no avail;—but if a term shall not have elapsed, and the *alias* shall be delivered to the sheriff before the sale of property, under a junior execution in favor of another creditor, the lien shall continue notwithstanding the *alias* may not have been delivered until after such junior execution; but if such *alias* shall not be delivered until after the sale under such junior execution, the lien of the latter shall prevail.

Ib. Sec. 3. First lien may be forfeited by failure to indemnify sheriff.

§ 39. If the title of the property levied on be so doubtful as to induce the sheriff to require a bond of indemnity, if the party having the prior lien shall fail or refuse to give such bond, then the person having the next lien, shall be authorized to give such bond, and have the property sold for his benefit.

4. Property exempt from Execution.

1807—(21) *Sec.* 35. Goods and chattels on leased premises exempted conditionally.

§ 40. No goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, or will, or otherwise, shall be liable to be taken by virtue of any writ of execution on any pretence whatever, unless the party so taking the same shall, before the removal of the goods from such premises, pay or tender to the landlord or lessor thereof, or his agent, all money due for the rent of the said premises at the time of taking such goods, or chattels, in execution: *Provided nevertheless*, That such rent arrears do not amount to more than one year's rent, and if more be due, then the party suing out such execution, paying or tendering to such landlord, or his agent, one year's rent, may proceed to execute his judgment, and the sheriff or officer levying the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for the rent, as the execution money.[1]

1821—(16) *Sec.* 1. Execution not to be levied on crop until gathered.

§ 41. It shall not be lawful for any sheriff or other officer, to levy a writ of *fieri facias* or other execution on the planted crop of a debtor, or person against whom an execution may issue, until the crop is gathered.

1833—(28) *Sec.* 1. Property exempted absolutely.

§ 42. The following articles shall be retained by and for the use of every family in this state, free and exempt from levy or sale by virtue of any execution or other legal process, that is to say: two beds and furniture, two cows and calves, two spinning-wheels, two axes, two hoes, five hundred weight of meat, one hundred bushels of corn, all the meal that may at any time be on hand, two ploughs, one table, one pot, one oven, two water vessels, two pair cotton cards, all books, one churn, three chairs, one work horse, mule, or pair of work oxen, one horse or ox cart, one gun, all tools or implements of trade, and twenty head of hogs.

Note.—The arms and accoutrements of the militia are also exempt from execution or other process.—See "Militia," Chap. 4.

5. Right of Property Executed.

1807—(21) *Sec.* 16. Where the right of property is doubtful, the sheriff may demand indemnity.

§ 43. If any sheriff shall levy an execution on property, and a doubt shall arise whether the right of such property is in the debtor or not, such sheriff may apply to the plaintiff, his attorney or agent, for his bond, with good security, for indemnification for the sale of the property seized; which, if the plaintiff, his attorney or agent, refuses or fails to do, within ten days after such application, the sheriff or other officer shall be justified in delivering up such property to the party from whose possession it was taken.

1812—(19) *Sec.* 1. How to proceed in case of fraudulent conveyance of defendant's property.

§ 44. When the sheriff shall return on any execution, "that there is no property to be found in his county belonging to the defendant," and it shall be suggested by the plaintiff that the defendant has property in his own right, but hath fraudulently conveyed the same, for the purpose of defrauding his creditor, or to avoid the payment of the execution; notice in the nature of a *scire facias* shall be directed by the court to issue to the person or persons in whose hands such property is supposed to be, or having such fraudulent conveyance, and on the return of the *scire facias* executed as in other cases, an issue shall be made up and tried by a jury; and if the jury shall find the conveyance to be fraudulent, or without valuable consideration, the property thus fraudulently conveyed or made over shall be subject to the plaintiff's execution, in the hands of the defendant, or the person or persons thus notified.

1812—(16) *Sec.* 7. Claimant of executed property to make oath and give bond.

§ 45. Where any sheriff shall levy execution on property claimed by any person, not a party to such execution, such person may make oath to such property; and it shall thereupon be the duty of the sheriff to postpone the sale or further execution of the judgment until the next term of the superior court of the county in which such execution is so levied; and such court shall require the parties concerned, to make up an issue under such rules as they may adopt, so as to try the right of property before a jury at the same term;[1] and the sheriff shall make return on said execution accordingly: *Provided*, That the person claiming such property, or his attorney, shall give bond to the sheriff with security in a sum equal to the amount of the execution, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property, may assess against him, in case it should appear that such claim was made for the purpose of delay; (1) and the jury shall have power to give such damages, not less than ten per cent. as may seem reasonable and just to the plaintiff, against the claimant, in case it shall be sufficiently shown that such claim was intended for delay only; and it shall be lawful for such jury to give verdict in manner aforesaid, by virtue whereof judgment may be entered up, and execution issued against such claimant: *And provided also*, That the burthen of the proof shall be upon the plaintiff in the execution, and it shall be the duty of the sheriff to return the property levied upon, to the person out of whose possession the same was taken, upon such person entering into bond, with security, to the plaintiff in execution, in double the amount of the debt and costs, conditioned for the delivery of the property to the sheriff, whenever the claim of the property so taken shall be determined by the court; and if any person to whom property is so returned, shall neglect or refuse to deliver the property to the sheriff, it shall be the duty of the sheriff forthwith to return the bond to the clerk's office of the superior court, which bond shall have the force and effect of a judgment, and execution may be awarded by the court against all or any of the obligors, having ten days' notice thereof.

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[1] The same restriction applies to crops raised on rented lands.—See "Rent."

Condition.

Burthen of proof to lie on plaintiff in execution.

Bond to have force of judgment.

1821—(38) *Sec.* 2. Jury may assess damages not exceeding 15 per cent.

§ 46. In all trials of the right of property as aforesaid, when the jury may be of opinion that the claim was made to said property for purposes of vexation or delay, they shall have power to give such damages as the case may require, not exceeding fifteen per cent. on the amount of the execution.

Ib. Sec. 4. Claim not dismissed but by consent of opposite party.

§ 47. Whenever any claim to property shall be made, the same shall not be dismissed, discontinued, or withdrawn, but by the consent of the opposite party.

1822—(9) *Sec.* 1. When the claim does not exceed 50 dollars, Justice to issue *venire facias.*

§ 48. In all cases where property shall be taken by virtue of an execution or attachment, when the sum claimed doth not exceed fifty dollars, the person or persons claiming the same, and not being a party to the suit, may apply to some justice of the peace for a *venire facias*, directed to the constable or other officer, to summon seven good and lawful jurors to attend at such time and place as he the said justice shall appoint, not less than five, nor more than ten days from the time of issuing the same: *Provided always*, That said justice of the peace, before he issues his *venire facias*, shall require the claimant to make oath or affirmation of his right to the property; and if the jury shall find the property liable to the execution, the person or persons laying claim, shall pay the costs of said trial, and execution may issue therefor; but if the property shall be found to be the property of the person laying claim, the plaintiff shall pay the costs.

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[1] An act passed December 18, 1821, "prescribing the manner of changing the venue in criminal cases, and for other purposes," has the following clause: "Sec. 2. *And be it further enacted*, That it shall be lawful in issues, made up for the purpose of trying the right to any property taken in execution, for the judge trying such case to grant continuances upon good cause shown, as in other cases, any law to the contrary notwithstanding."

(1) The bond with security of one of several claimants, is sufficient to authorise the trial of the right of property. Marrs & Co. *v.* Gantt, *Min. Rep.* 406

Costs.

§ 49. The jury so summoned, when they appear at the place appointed, shall take the following oath, viz: "We, and each of us, do solemnly swear, (or affirm, as the case may be,) that we will well and truly inquire into the right of property now held by execution (or attachment, as the case may be,) and a true verdict give according to evidence: So help me God." *Provided always*, That if any of the jurors summoned as aforesaid, fail to attend, the constable shall complete the number from the by-standers; and the verdict of the jury shall be returned to the justice, who shall enter judgment thereon; and if either party be dissatisfied with such judgment, they shall be entitled to an appeal to the next circuit court, where the trial shall be had the first term, by an issue made up by the parties or their counsel.

Ib. Sec. 2. Oath of jury. Constable may summon talesmen. Parties may appeal.

§ 50. Where it may appear to the satisfaction of the jury, that the claim was set up for the purpose of vexation or delay, the jury shall assess the damage not exceeding fifteen per cent. on the amount of the plaintiff's claim.

Ib. Sec. 3. Jury may assess damages.

§ 51. If any person being returned as a juror, to try the right of property as aforesaid, fail to attend, it shall be the duty of the justice attending said trial, to assess a fine on said juror, not exceeding five dollars; but if said juror shall attend within five days, and render a sufficient excuse to the justice aforesaid, his fine shall be remitted; and any witness failing to attend and give evidence, when legally summoned for that purpose, shall be liable, in like manner, to a fine not exceeding five dollars; which fines shall be collected by the constable, and paid to the county treasurer.

Ib. Sec. 4. Defaulting jurors and witnesses may be fined.

§ 52. Nothing herein contained shall be so construed as to prevent the party, in whose possession the property is levied on, from retaining that possession, under the rules and regulations heretofore prescribed by law.

Ib. Sec. 5.

§ 53. Whenever any sheriff, coroner, or constable takes from the plaintiff in any execution, a bond indemnifying him for levying or selling property, the title to which is doubtful or disputed, if suit is instituted against him, or against any of his deputies for making such levy or sale, he may give notice to the principal and securities in said bond, of the pendency of such suit, whose duty it shall be to defend the same, and the judgment for the same amount shall be rendered by the court on motion, in favor of said sheriff, coroner, or constable, against the principal and security in such bond, as may be obtained by the party suing such sheriff, coroner, or constable, which judgment may be rendered at any time after a recovery against any sheriff, coroner, or constable: *Provided*, That the court shall, in all cases when required to do so by the obligors in any such bond, cause any issues in fact which may arise on such motion to be tried by a jury.

1827—(18) *Sec.* 1. Sheriff may give notice to obligors in indemnity bond to defend suit—and have judgment against them on motion.

§ 54. The notice contemplated by this act shall be given to the obligors in the bond of indemnity, at least sixty days before the trial of any suit against said officers.

Ib. Sec. 2. Notice to be sixty days before trial.

§ 55. It shall be the duty of the sheriff to prepare a bond, whenever property levied on by him shall be claimed and affidavit made, and good security offered for the trial of the right thereof, which bond shall be made payable to the plaintiff in the execution, and conditioned for the forthcoming of the property, if the same be found liable to the execution, and for the payment of such costs and damages as shall be

1828—(33) *Sec.* 1. Sheriff to prepare bond, when property levied on shall be claimed. Bond payable to plaintiff.

recovered for putting in the claim for delay, for which bond the sheriff shall be entitled to a fee of fifty cents, to be taxed in the bill of costs.

Ib. Sec. 2. On execution from another county, right of property to be tried in the county where the levy is made.

§ 56. Whenever property shall be levied on, by virtue of an execution from another county, if the same shall be claimed, and bond given to try the right thereof, the trial shall be had as heretofore in the county where the levy shall have been made, and it shall be the duty of the sheriff to return the execution to the court from which it issued, with his return endorsed, and to make out a copy of the same, and of his return, and return such copy to the circuit court of the county in which the levy shall be made, and the copy of such execution, shall be sufficient for the court to proceed on, and try the right of the property levied on.

Ib. Sec. 3. Jury to find the value of each article separately.

§ 57. It shall be the duty of the jury, in all cases, when they shall find the property subject to the execution, to find the value of each article separately; and if the claimant shall fail to deliver the same or any part thereof when required by the sheriff, it shall be the duty of the sheriff to go to the clerk, and endorse such failure on the bond by him returned, with a copy of the execution, whereupon said bond shall have the force of a judgment, and the clerk shall issue execution against the claimant or claimants, and his or their security or securities, for the value of the property not delivered, as assessed by the jury, with interest from the date of the verdict; and if either party shall appeal, or sue out a writ of error, and wish to supersede the judgment, bond and security shall be given to the adverse party in double the value of the property levied on, if said value shall be less than the judgment, but if as much or more than the judgment, then bond shall be taken in double the amount of the judgment, and the damages given for delay.

Forfeiture of claimant's bond.

Appeal bond.

Ib. Sec. 4. Proceedings on forfeiture of delivery bond under execution from justice of the peace of another county.

§ 58. If property shall be levied on by a constable by virtue of an execution from another county, and the property shall not be delivered on the day of sale, according to the delivery bond, the same shall be returned by the constable forfeited, to any justice of the peace in his county, together with a copy of said execution, who shall proceed thereon in the same manner as if judgment had been given by him, and said constable shall return the execution to the justice that issued it, with an endorsement showing the levy and the forfeiture of the bond.

Ib. Sec. 5. Trial of the right of property claimed in such case.

§ 59. If property so levied on shall be claimed by a third person, it shall be the duty of the constable to return, in like manner, a copy of the execution, and the forthcoming bond to some justice of the peace in his county, with the fact of the claim being put in, and it shall be the duty of the said justice to proceed with the trial of the right of property in the same manner as if the judgment in the case had been rendered by him, and said copy of the execution shall supply the place of the original in the trial; and said justice shall issue execution against the claimant and security, for the value of the property, if it shall not be delivered after being found subject to the execution; and in case of appeal, the *procedendo* shall go to the justice before whom the right of property shall have been tried, who shall issue all necessary process in obedience thereto; and when the proceedings shall be closed, he shall send a certificate of the result to the justice who issued the first execution, and it shall be the duty of the constable, so soon as a claim of property shall be put in, to return the execution to the justice who issued it, with a return endorsed, showing the levy and the claim.

Ib. Sec. 6. Trial of right not to exempt other property from execution.

§ 60. Proceedings for the trial of the right of property, shall in no case prevent the plaintiff from going on to make his money out of other property than that levied on and claimed, if it be found; but the supersedeas, by appeal or writ of error, shall only apply to the property so levied on and claimed.

§ 61. So much of the law now in force as requires two bonds to be taken for the trial of the right of property, is hereby repealed: *Provided*, That a claim of property in conformity to the provisions of this act, shall operate as a release by the claimant, of damages against the sheriff or other officer taking such property in execution.

Ib. Sec. 7.
Only one bond necessary.
Release of damages by claimant.

6. Delivery Bonds.

§ 62. When an execution shall issue against the estate of any sheriff, under-sheriff, marshal of a corporation, coroner, or constable, or their securities, or their heirs, executors, or administrators, or either of them, upon a judgment obtained against such sheriff, under-sheriff, marshal of a corporation, coroner, or constable, or securities, or their heirs, executors, or administrators, or either of them, for money recovered by such sheriff, under-sheriff, marshal of a corporation, coroner, or constable, by virtue of any execution or process levied or executed by him or them, or for any money collected or received by them, in any manner, as sheriff, under-sheriff, marshal, coroner, or constable, no security for the payment of the money mentioned in such execution, at a future day, or to have the goods forthcoming at the day of sale, shall be taken or received; but the officer taking such estate in execution, shall proceed immediately to the sale thereof, notwithstanding such security be tendered; and for the better direction of such officer, the clerk issuing such execution, shall endorse thereon, that "no security of any kind is to be taken."

1807—(21) *Sec.* 11.
No security allowed on execution against sheriff, &c. for money received by them.

§ 63. If a forthcoming bond be quashed as faulty, the sheriff taking the same shall be at all times liable for damages to the party injured, or his representatives.

Ib. Sec. 30.
Sheriff liable for insufficient bond.

§ 64. It shall be the duty of every officer levying any execution on goods and chattels, if the person whose property is levied on, or who may have delivered up property in discharge of his body, will give bond to the creditor or creditors, with good and sufficient security, in the penalty of double the amount due by such execution, including all costs, conditioned for the forthcoming and delivery of the same property to the proper officer, on the day, and at the place appointed for the sale of the same, by twelve o'clock (noon,) to suffer the property to remain in the possession of, and at the risk of the debtor or debtors.

1812—(15) *Sec.* 4.
Property levied on may remain with the defendant upon his giving bond.

§ 65. Every officer taking any bond under this act, shall be entitled to seventy-five cents for taking the same, but shall not be entitled to any commissions on any execution, unless the money be made, or property actually sold.

Ib. Sec. 5.
Officers' fees.

§ 66. On the forfeiture of any bond given to any sheriff or coroner, for the forthcoming of property by him levied on, by virtue of an execution, if the same was issued from the circuit or county court, of the county of which he is sheriff or coroner, it shall be his duty to return the said bond and execution within ten days thereafter, to the clerk of said court, with the necessary endorsement thereon, of forfeiture; and it shall be the duty of the several clerks of the circuit and county courts of this state, within five days after any forthcoming bond has been returned by the proper officer as forfeited, to his said office, to issue execution thereon, [a]against all the obligors therein; and on any such execution, no security of any kind shall be taken; and the clerk issuing the same, shall endorse the same thereon, and the officer to whom the same may be directed, shall act according-

1829—(14) *Sec.* 8.
Sheriff to return forfeited bond in ten days.
Clerk to issue execution thereon in five days.
[a 1812—(15) *Sec.* 4.]
Sheriff failing, liable to motion.

ly.(1) And any clerk, sheriff, or coroner, failing to comply with the provisions of this section, shall be liable to the motion of the plaintiff or plaintiffs in execution, to be made before the court from which said execution issued; and on said court being satisfied, that said clerk, sheriff, or coroner, has failed to comply with the provisions of this section, it shall be lawful for said court, to enter judgment against said clerk, sheriff, or coroner, and his security or securities, for the sum due on said execution, with ten per centum damages thereon, and all costs: *Provided*, That said clerk, sheriff, or coroner, and his security or securities, or such of them as judgment is rendered against, shall have five days notice of said motion.

1832—(30) *Sec.* 2. Property levied on by constable may be replevied.

Forfeited bonds to have the force of judgments.

Execution.

[a 1807—(3) *Sec.* 4.] Allowance for keeping live stock.

Sale and notice.

§ 67. Whenever any property is taken by a constable, by virtue of an execution issued by a justice of the peace, he shall, on the defendant in execution or other person for him, giving bond and security, in double the amount of the palintiff's demand, including all costs, for the forthcoming of said property on the day of sale, permit the property to remain in the possession of such person until the day of sale; and in case such property is not forthcoming agreeably to the condition of such bond, the constable shall endorse on such bond "forfeited," and return the same, together with the execution, in virtue of which it was taken, to the justice of the peace who issued said execution; and every forthcoming bond so returned "forfeited," shall have the force and effect of a judgment; and the justice of the peace shall, immediately upon the return of every such bond "forfeited," issue execution thereon against all the obligors in said bond, and shall endorse thereon, "no security of any kind is to be taken on this execution," and the constable to whom the same may be delivered shall act accordingly.(2) [a]But when such person or persons shall not be able, or shall refuse to give such security, in either case, and the property consisting of live stock, the constable shall take care of the same, and an allowance shall be made him out of the sale of such property, to be adjudged of by the justice to whom such execution is returned; and there shall not be more than fifteen days[1] between the constable's executing, and selling any property taken by virtue of an execution: the constable shall give ten days notice, at least, of such sale, by advertising at the most public place or places in the neighbourhood, of the time and place of such sale, where the person or persons may reside, from whom such property is taken.

Note.—Delivery bonds taken by constables, shall be payable to the plaintiff.—See "Bail in Civil Cases,"—§ 19.

7. Sales under Execution.

1812—(15) *Sec.* 6. Where sheriffs and constables shall sell property.

§ 68. The sheriff or coroner of each county shall sell all property which shall be sold by virtue of any execution, at the court-house of the proper county, if the property can conveniently be removed there, otherwise at some other convenient place; and every constable shall sell all property which he may sell by virtue of any execution, at or near the residence of the debtor; and in all cases the proper officer shall give at least ten days previous notice of the time and place of sale, by advertisement set up near the residence of the debtor, and in cases of sales made by a sheriff or coroner, at the court-house of the proper county.

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(1) To authorize a summary judgment against the security, on a bond for the delivery of property taken in execution, and claimed by a third person, the sheriff must have returned such bond forfeited. Allen *v* Hays. 1 *Stewt. Rep.* 10.

(2) Delivery bonds taken by constables may be good as common law bonds, though not taken strictly as the statute requires. *Sugg* v. *Burgess & Davis*, 2 *Stewt. Rep.* 509.

[1] Except in the case of slaves, where twenty days notice is required. See § 71.

Notice of sale.

§ 69. It shall be the duty of the sheriff in each county, to sell all land and slaves taken in execution by him, on the first Monday in every month, and not otherwise,[2] at the court-house door of his county, to the highest bidder; and no other than the legal title to land or other real estate, shall hereafter be sold or conveyed by virtue of any execution.

1820—(19) *Sec.* 2. Land and slaves, when and where to be sold.

§ 70. All slaves levied on by any constable by virtue of an execution issued by a justice of the peace, shall be sold at public auction, at the court-house door, or at the place of holding court in the county in which such execution may issue, on the days and hours prescribed by law, for the sales of slaves by sheriffs.

1824—(19) *Sec.* 1. Sale of slaves by constables.

§ 71. It shall be the duty of the constable to give at least twenty days notice in three or more public places in his county, one of which to be at the court-house door, of the time and place of selling such slave, with a description of such slave to be sold.

Ib. Sec. 2. Notice.

§ 72. All sales made hereafter, by any sheriff, coroner, or constable, shall be made between the hours of eleven o'clock in the forenoon, and four o'clock in the afternoon.

1826—(26) *Sec.* 1. Sales between 11 A.M. and 4 P.M.

8. PROCEEDINGS AGAINST OFFICERS HOLDING EXECUTIONS.

1. *Sheriffs, Coroners, &c.*

§ 73. *Whereas*, doubts have arisen in what manner judgment should be rendered against any sheriff, coroner, or marshal of a corporation, who shall fail to return an execution to the office from whence it issued, on or before the return day thereof:

1807—(21) *Sec.* 31. Judgment against sheriff, &c., on failing to return execution.

Be it enacted, That when any writ of execution, or attachment for not performing a decree in chancery, shall come into the possession of any sheriff, coroner, or marshal of a corporation, and he shall fail to return the same to the office from whence it issued, on or before the return day thereof, it shall be lawful for the court, ten days previous notice being given, upon motion of the party injured, to fine such sheriff, coroner, or marshal of a corporation, in any sum not exceeding five dollars per month, for every hundred dollars contained in the judgment or decree on which the execution or attachment so by him detained was founded, and so in proportion for any greater or less sum, counting the aforesaid months from the return day of the execution or attachment, to the day of rendering judgment for the said fine.

§ 74. If any sheriff or other officer shall make return on any writ of *fieri facias* or *venditioni exponas*, that he hath levied the debt, damages, or costs, as in such writ is required, or any part thereof, and shall not immediately pay the same to the party to whom the same is payable, or to his attorney, or shall return upon any writ of *capias ad satisfaciendum*, or attachment for not performing a decree in chancery, for payment of any sum of money, that he hath taken the body or bodies of the defendant or defendants, and hath the same ready to satisfy the money in such writ mentioned, and shall have actually received such money of the defendant or defendants, or have suffered him, her, or them

Ib. Sec. 32. Proceedings against sheriff for failing to pay money received on execution.

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[2] Formerly the first Monday, and following Tuesday and Wednesday but as to the two last days, repealed by act of Jan. 13, 1826.

to escape with the consent of such sheriff, under-sheriff, or officer, and shall not immediately pay such money to the party to whom the same is payable, or his attorney, then, and in either of the said cases, it shall be lawful for the creditor, at whose suit such writ of *fieri facias, venditioni exponas, capias ad satisfaciendum*, or attachment shall issue, upon a motion made at the next succeeding court from whence such writ shall issue, to demand judgment against such sheriff, officer, or under-sheriff, or securities of such under-sheriff, for the money mentioned in such writ, or so much as shall be returned levied on such writs of *fieri facias*, or *venditioni exponas*, with interest thereon, at the rate of fifteen per centum, per annum, from the return day of the execution, until the judgment shall be discharged; and such court is hereby authorised and required to give judgment accordingly, and to award execution thereon; *Provided*, such sheriff or officer have ten days previous notice of such motion.[1]

Ten days notice.

Ib. Sec. 33.
Creditor to appoint an agent in the county where the execution is to be levied.

§ 75. And whereas, it is unreasonable that sheriffs should be obliged to go out of their counties to give notice to creditors at whose suit any person may be in the custody of such sheriff, or to pay money levied by execution: *Be it therefore enacted*, That where any execution shall be delivered to the sheriff of any other county, than that where any creditor resides, such creditor shall name some person in the county where the execution is to be levied, to be his, her, or their agent, for the particular purpose of receiving the money on such execution, and for giving to, and receiving from the sheriff, any notices which may be necessary, relating thereto; and payment made, and notices given to such agents, shall be as effectual as if made or given to the creditor, and if any creditor shall fail to appoint such agent, no judgment shall be entered against the sheriff for non-payment of the money mentioned in such execution, unless a demand thereof shall have been first made of such sheriff, in his county, by the creditor or some other person having a written order from him; nor in case of failure in appointing such agent, shall the sheriff or prisoner be obliged to give notice previous to the discharge of such prisoner, either for want of security for his prison fees, or upon his taking the oath of an insolvent debtor; but such prisoner shall be discharged in those cases, respectively, without any notice to be given to the creditor so failing.

On failure, sheriff or prisoner not bound to give notice, either of discharge or of taking the oath.

1826—(17)
Sec. 1.
Motion against sheriff, &c., for failing to pay over money received.

§ 76. Whenever any clerk, sheriff, or coroner, shall fail or refuse to pay over any money, collected or received by him, upon any execution, on the application of the plaintiff or plaintiffs, his, her, or their attorney or agent, it shall be lawful for the court, to which the said execution shall be returnable, upon one day's notice being given to the said clerk, sheriff, or coroner, and on motion of the plaintiff or plaintiffs in said execution, to render judgment against the clerk, sheriff, or coroner, thus failing, and his security, or any or either of them, for the amout of money thus received, together with five per centum upon the amount of the said execution as damages, for each and every month, for which the said money shall have been detained, after demand made, together with the costs of suit.

Ib. Sec. 2.
For false return, damages, &c.

§ 77. Whenever any sheriff or coroner shall make any return of any execution, which the plaintiff or plaintiffs, his, her, or their attorney, shall suggest to the court to be a false return, the court shall forthwith cause an issue to be made up to try the falsity of said return; and if the said return be found false, judgment shall be rendered against the said sheriff or coroner, and his securities, or any or either of them, for the amount of money specified in said execution, together with ten per centum damages on the amount of the execution, and also the costs of suit. (1)

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[1] The remedial provisions of this section, are in a great measure superseded by the act of Jan. 12, 1826. See § 76.

Ib. Sec. 3. Proceedings on suggestion that the money could have been made.

§ 78. Whenever any sheriff or coroner, to whom an execution shall have been delivered, shall fail to make the money on or before the first day of the term of the court, to which said execution shall be returnable, and the plaintiff or plaintiffs, his, her, or their attorney, shall suggest to the court, that the money could have been made, by said sheriff or coroner, with due diligence, it shall be the duty of the court forthwith to cause an issue to be made up, to try the fact; and if it shall be found by the jury, that the money could have been made by the sheriff or coroner, with due diligence, judgment shall be rendered against said sheriff or coroner, and his securities, or any or either of them, for the sum of money specified in said execution, together with ten per centum, on the amount of said execution, as damages, and also the costs of suit.

Judgment, &c.

Ib. Sec. 4. Courts may issue attachments against defaulting officers.

§ 79. It shall be lawful for the court, to which an execution shall be returnable, to issue an attachment against any sheriff or coroner, who shall have received any execution, and failed to return the same; and also, to issue an attachment against any person who shall, as clerk, or sheriff, or coroner, have collected or received money upon any execution, and fails to pay over the same, upon its appearing to the court, that the party, thus failing, has had one day's notice of the motion to be made for the said attachment.[1]

2. *Constables.* 1824—(21) *Sec.* 1. Proceedings against constable for not returning execution.

§ 80. If any constable shall fail to return any execution issued by a justice of the peace, and delivered to said constable, to the justice issuing the same, on or before the day on which such execution is made returnable, it shall be lawful for the plaintiff in the execution, his agent or attorney, to move said justice, after having given three days notice of the time and place of making such motion, to said constable, or his security or securities, for judgment against said constable and his securities, for the amount for which said execution issued, with interest thereon from the day on which the judgment was granted, to the day of making said motion, together with the costs of the motion; whereupon it shall be the duty of said justice, to render judgment against said constable and his security or securities, according to the above provision.

Ib. Sec. 2. Constable failing to pay over money, liable to motion, and forfeiture of 10 per cent. per month.

§ 81. Any constable who shall collect all or any part of an execution, issued by a justice of the peace, and shall refuse or fail to pay said money so collected, to the plaintiff in said execution, his agent or attorney, on demand, shall forfeit and pay to said plaintiff ten per centum per month on the sum collected as aforesaid, and at that rate for a greater or less sum, or a longer or shorter time; and it shall be lawful for the plaintiff in said execution, on giving to said constable, or his security or securities, three days previous notice of the time and place of making such motion, to move for, and obtain judgment against said constable and his security or securities, before the justice of the peace who issued said execution, for the amount of money col-

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(1) In an action against a sheriff *for a false return*, there must be a fraudulent intention to charge the defendant. Sutherlands *v.* Cunningham, 1 *Stewt. Rep.* 438. If a party is injured by an improper return, the remedy is by a special action on the case, and damages are recoverable according to the loss.—*ib.*

[1] When judgment is rendered against the sheriff for the default of his deputy, he may have judgment against such deputy and his securities, by motion, on one day's notice. See "Sheriffs"—last section.

When damages, &c., exceed 50 dolls. the motion to be made in circuit or county court, and judgment to bear 5 per cent. per month interest.

lected as aforesaid, together with said ten per centum per month as aforesaid, in cases where the addition of ten per centum per month to the money collected as aforesaid, will not exceed the sum of fifty dollars:—and in cases where the addition of ten per centum per month, to the money collected as aforesaid, will exceed the sum of fifty dollars, the said motion, against the said constable and his securities, shall be made to, and judgment rendered by, either the circuit or county court of the county in which the justice resided, who issued said execution, on giving the constable or his security or securities three days previous notice of the time and place of making such motion; which judgment rendered as aforesaid, shall bear interest at the rate of five per cent. per month, from the rendition of judgment until the same be paid; and the execution issued on said judgment shall, in the body thereof, express that the judgment on which it issued, bears five per centum per month.

Ib. Sec. 3. Judgment not to be stayed.

§ 82. Any judgment rendered as authorized by this act, shall not be stayed as judgments of justices of the peace are now authorized by law to be.

1829—(14) *Sec.* 9. False return by constable, how tried, judgment thereon.

§ 83. Whenever any constable shall make return on any execution, which the plaintiff or plaintiffs, his or their attorney, may wish to contest as false, he, she, or they may notify such constable and his security or securities, or either of them in writing, that at the next circuit or county court for said county, he, she, or they will suggest to said court, that said return is false; and on the said constable and his security or securities, or either of them having five days' notice of said motion, said court shall, at said term, cause an issue to be made up to try the falsity of said return; and if the return be found false, judgment shall be rendered against said constable and his security or securities, or such of them as may have been notified, for the amount of money specified in said execution, together with ten per centum damages on the amount of said execution, and also all costs.

Ib. Sec. 10. Proceedings where plaintiff suggests that constable might have made the money.

§ 84. Whenever any constable, to whom an execution shall have been delivered, shall fail to make the money on or before the return day thereof, it shall be lawful for the plaintiff or plaintiffs, his or their agent or attorney, to notify said constable and his security or securities, or any or either of them in writing, that at the next circuit or county court for said county, he, she, or they will suggest to said court, that the money could have been made by said constable, with due diligence; and said court shall, on being satisfied that said notice has been served five days before said court, on said constable, and his security or securities, or either of them, cause an issue to be made up to try the fact; and if it shall be found by the jury that the money could have been made by said constable with due diligence, judgment shall be rendered against said constable and securities (if notice was served on them severally, if not, against such of them as are notified,) for the sum of money specified in the execution, together with ten per centum on the amount of said execution, as damages, and also all costs. [See "Justices of the Peace and Constables,"—§ 7.]

Damages.

EXECUTORS AND ADMINISTRATORS.

1806—(1) *Sec.* 20. To whom administration may be granted.

§ 1. If any person die intestate, or the executors named in any testament renounce the executorship, or refuse or neglect for the space of forty days after the death of the testator, to exhibit such testament for probate, then administration of the goods and chattels, rights and credits of such intestate, or of such testator, with the testament nnexed, shall be granted to the widow, or the next of kin of such intestate or testator, or to some of them; and in case of their, and each of their refusal, then to a principal creditor or creditors of such intestate or testator; and if none of them will accept thereof, then to such other proper person or persons as will accept the same.

1821—(4) Sec. 12. Oath of executors and administrators, with the will annexed.

§ 2. Before issuing letters testamentary, or letters of administration with the will annexed, such executor or executrix, administrator or administratrix, with the will annexed, shall take, and the judge shall administer the following oath, viz: "You swear that the writing which has been admitted to be recorded as the last will of , contains the true last will of said , as far as you know or believe, and that you will well and truly execute said will, according to law, and the directions thereof, as far as the goods and chattels, rights and credits of the said will extend; and that you will return a true inventory of all said goods, chattels, and credits, so far as they may come to your knowledge, a true account of sales, and your said administration, as required by law." And before issuing any other letters of administration, such administrator or administratrix shall take, and the judge shall administer the following oath, viz: "You swear that , deceased, died without any lawful will, as far as you know or believe, and that you will well and truly administer all and singular the goods, chattels, and credits of the said deceased, and return a true inventory thereof, so far as they may come to your knowledge, and a just account of sales, and of your said administration, as required by law;" but when letters testamentary, or of administration shall be granted on an authenticated copy of a will, and in such other cases, as in the opinion of the judge, may require a change in the form of the oath, the oath may be administered in such form as, in the opinion of the judge, is suitable to the nature of the case.

Oath of other administrators.

Form.

May be varied.

Ib. Sec. 13. Executor's and administrator's bond.

§ 3. In all cases, before granting letters testamentary, or of administration or guardianship, the executor or executrix, administrator or administratrix, or guardian, shall enter into bond, with at least two sufficient securities, approved by the judge, payable to him and his successors in office, in such penalty as he may direct, which shall be at least equal to double the estimated value of the estate, with a condition as follows: "The condition of the above obligation is such, that whereas the above bound has been duly appointed administrator of the estate of , (or administratrix, or executor or executrix of the last will of , or guardian of , as the case may be,) now if the said shall well and truly perform all the duties which are, or may be by law required of him (her or them) as such administrator, (or administratrix, executor, or executrix, or guardian, as the case may be,) then the above obligation to be void, otherwise to remain in full force." Such bond shall not become void on the first recovery, and may be put in suit, and prosecuted from time to time, against all, or any one or more of the obligors, in the name and at the cost of any person or persons injured by a breach thereof, until the whole penalty shall be recovered thereon.

How proceeded on.

1806—(1) Sec. 40. Court may require further security of administrators.

§ 4. The orphans' court shall have full power, when letters of administration shall be granted upon insufficient security, to order and direct such administrators to give further and sufficient security, by bond in the usual form. And if it appear upon examination that any administrator hath embezzled, wasted, or misapplied all, or any part of the decedent's estate, or shall refuse or neglect to give bond, with

And revoke, and grant anew, letters of administration.
Administrator's remedy against predecessor.

security as aforesaid, the said court may forthwith revoke or repeal the letters of administration, and thereupon grant letters of administration to such other person or persons, having a right thereto, as will give bond in manner and form aforesaid; who may have actions of trover, detinue, account, and on the case, for such goods or chattels as came to the possession of the former administrators, and were withheld, wasted, embezzled, detained, or misapplied, by any of them, and no satisfaction made for the same.

1821—(4) *Sec.* 14. Additional grounds for requiring further security of executors, &c.

§ 5. Any executor, executrix, administrator, administratrix, or guardian, may be ordered to give further security on complaint of any of his, her or their securities, or of any of their representatives, or when there shall appear sufficient grounds to believe, that he, she, or they, are about to misapply, embezzle, or remove from the state, the property committed to his, her, or their charge, on proof of gross neglect in the performance of any of the duties, on him, her or them enjoined by law, or that his, her, or their securities, have become insufficient, as well as for the causes heretofore specified; and on proof that such executor or executrix, administrator or administratrix, or guardian, has removed from the state, or otherwise endeavored to elude the service of process on any such complaint, the same may be heard and determined, though the citation be not executed.

1806—(1) *Sec.* 41. Remedy where executors or administrators are absent, insane, or unable to discharge their trust.

§ 6. If any executor of any last will and testament, or administrator of an intestate's estate, residing out of this territory, at the time of taking that trust, or afterward removing out of the said territory, shall refuse or neglect, after due notice from the orphans' court, to render his account, and make settlement of such estate, with creditors, legatees, or heirs, or their legal representatives; or if any executor or administrator shall become insane; or if any administrator becomes otherwise incapable of, or evidently unsuitable to discharge the trust reposed in him, the said orphans' court are authorized and empowered in each of the said cases mentioned in this section, to grant letters of administration, with the will annexed, or otherwise, as the case may require, to such person or persons, as may be entitled to the same, and as to the said court shall seem meet. And the administrator thus appointed shall have the same power and authority to administer the estate of the deceased, not administered upon, by such former executor or administrator, and be subject to the same duties, in as full and ample a manner, as if the executor or administrator, so removed or residing out of this territory, as aforesaid, were actually dead.

1821—(4) *Sec.* 16. Change of security.

§ 7. Where new security shall be ordered and taken, of any executor, executrix, administrator, administratrix, or guardian, the judge may direct such alteration in the condition of the bond as the case may require, and may order the original securities to be discharged entirely, or from the time of taking such new security, as to him shall seem proper.

1810—(3) *Sec.* 4. Administrator *ad colligendum.*

§ 8. So much of the twenty-first section of an act entitled "An act concerning wills and testaments, the settlement of intestates' estates, and the duty of executors, administrators, and guardians," as gives to the chief justice the power of appointing an administrator, or administrators, to collect together the goods of the deceased, for the purpose of depositing them in the hands of the chief justice, out of which he shall pay the debts of the deceased, and be liable in law as other administrators, is hereby repealed; and in lieu thereof, the chief justice, whenever he may deem it necessary, shall appoint an administrator or administrators, to collect the goods of the deceased; and in case the administrator or administrators so appointed, shall commence a

Suits by, to inure to administrator in chief.

suit or suits, the same shall not abate by the appointment of an administrator or administrators in chief, but the suit or suits may progress for the use of the administrator or administrators in chief.

1821—(4) Sec. 15. Executors, &c., may resign.

§ 9. Any executor, executrix, administrator or administratrix, or guardian, may, by writing, by him or her subscribed and delivered into the clerk's office, resign his or her authority:—but in such cases he, she, or they, and his, her, or their securities, shall be bound for all the assets or effects, which shall not have been duly administered or applied, or shall not be delivered to their successors respectively.

Ib. Sec. 17. Administration may be committed to the sheriff or coroner.

§ 10. Where no one shall have been admitted and qualified as executor, executrix, administrator, or administratrix, within three months after the death of the deceased, or where the executorship or administration shall have become vacant, by death, resignation, or removal, the judge having jurisdiction of the case may commit the administration to the sheriff or coroner of the county and (unless the judge shall otherwise order) no other oath, bond, or security, shall be necessary to be given than the bond and oath of office already taken and given by such sheriff or coroner; but on his bond for the performance of the duties of his office, he and his securities shall be liable for his administration, and such bond may be sued, and judgment from time to time recovered thereon, in the same manner as is or may be provided by law, in case of other bonds of executors, administrators, and guardians. (1) The administration so committed to any sheriff or coroner, may at any time be revoked, on the application of any of the executors, kindred or creditors of the deceased, and the executor permitted to qualify, or another administrator be appointed: during any contest about the validity of a will, the infancy or absence of the executor, or administrator, and in such other cases not otherwise provided for, as may so require, the judge may appoint an administrator or administratrix, with such limited authority as the case may require, and when the necessity of the case may require, such administrations may be granted or revoked forthwith, without any citation. [a]So much of the aforesaid act[1] as makes it the duty of the judges of the county courts to commit administration to the sheriff or coroner in certain cases therein designated, shall be taken and strictly construed so as to attach the said administration to the offices of sheriff or coroner, and not to the person.

May be revoked.

Limited administration.

[a1822—(11) Sec. 15.] Administration to attach to the office of sheriff, &c., not to the person.

1806—(1) Sec. 26. Appraisers to be appointed.

§ 11. Every orphans' court granting letters testamentary or letters of administration, shall nominate, and by warrant appoint three or more judicious and discreet persons, appraisers of the estate of the decedent, who shall return their appraisement on oath, in such time as the court shall appoint, of all the personal estate of such decedent to them shown; which appraisement, if subscribed and sworn to by the executor or administrator, may be considered as an inventory of such part of the estate, as had theretofore come to hand: and inventories (which the executor or administrator in all cases, shall return at the time limited by the court) and appraisements, may be given in evidence in any suit by or against the executor or administrator, but shall not be conclusive for or against him, if it be shown that the estate was really worth, or was *bona fide* sold for more or less than the appraisement.

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(1) Actions against sheriffs on their bonds, for failing to administer properly estates committed to them in virtue of their office, must be brought in the name of the judge of the county court, for the use of the party injured, and the declaration must show for whose benefit the trial is brought, or it is demurrable. Sheriffs in such cases are liable on their sheriff bonds, in the same manner as other administrators are on their administration bonds. The Governor *v.* Gantt et al., 1 *Stewt. Rep.* 388.

[1] The act of June 14, 1821. See 1821—(4) Sec. 17, forming the preceding part of this section.

1815—(6) *Sec.* 3. Executors and administrators to give notice in newspaper to creditors, to exhibit their claims.

§ 12. It shall be the duty of executors and administrators within two months after the granting letters testamentary or letters of administration, to publish in some newspaper, printed in this territory, a notice requiring all persons having claims against the estate of their testator or intestate, to exhibit the same within the time limited by law, or the same will be barred; which notice shall state the time of granting such letters testamentary or letters of administration, and shall continue to be published once a week for six weeks.

1809—(6) *Sec.* 1. Executors, &c., not to take the estate at its appraised value, nor to dispose of it except at public sale.

§ 13. It shall not be lawful for any executor or executors, administrator or administrators, guardian or guardians, to take the estate or any part thereof of any testator or intestate, at the appraised value, or to dispose of the same at private sale, except where the same is directed by the will of the testator. (1) But in all cases where it may be necessary to sell the whole, or any part of the personal estate of any testator or intestate, it shall be the duty of the executor, administrator or guardian, to apply to the orphans' court of their county, for an order of sale, and upon obtaining the same to advertise the time and place of such sale, in three or more public places in their county, at least thirty days previous to the day of sale, and then and there proceed to sell the same, at public sale, to the highest bidder, giving at least six months credit, the purchaser giving bond with approved security.

1815—(6) *Sec.* 4. Sales by executors to commence at 12 o'clock and end at 5. May be continued by giving notice.

§ 14. No sale by executor or executrix, administrator or administratrix, shall commence before the hour of twelve o'clock, on the day set apart for the same, nor continue longer than the hour of five o'clock in the afternoon of such day; but in case the time aforesaid shall be insufficient to complete the sale of such estate, intended to be sold, such executors or administrators may, on such event, continue such sale from day to day, by giving public notice thereof to the attending company, at the conclusion of the sale of each day, of such continuance, which continued sale shall commence and end within the hours aforesaid; and all sales, which may be commenced and held in any other manner than herein directed, shall be null and void.

1810—(3) *Sec.* 5. Orphans' court may authorize executor, &c., to dispose of crop at private sale.

§ 15. *Whereas*, it may sometimes become necessary to dispose of the crop belonging to the estate of deceased persons at private sale; *Be it therefore enacted*, That upon an application being made by any executor, administrator, or guardian to the orphans' court of any county, or in vacation to the chief justice of said court, such court or chief justice may grant an order for the sale of the crop belonging to the estate, in such manner as shall seem reasonable and the situation of the estate to require; and in all cases, it shall be the duty of the court to require of the applicant or applicants, an account of his proceedings under such order, to be rendered to the next orphans' court of their county.

1822—(18) *Sec.* 1. Administrator or executor may petition county court for authority to sell real estate. Requisites of petition.

§ 16. It shall be lawful for an administrator of any deceased intestate, or the executor of any deceased testator, who has not power by the will of the testator to sell real estate for the purpose of paying debts, or to make more equal distribution among the heirs, devisees, or legatees, to file a petition in the county court of the county in which letters of administration, or letters testamentary have been granted, setting forth that the personal estate of his intestate or testa-

(1) A purchase by an administrator, at his own sale by auction, is not void in itself; but is *prima facie* valid, if no unfairness appears. Brannan et al. *v.* Oliver, 2 *Stewt. Rep.* 47.

tor, (as the case may be,) is not sufficient for the payment of the just debts of such intestate or testator; or that the real estate of such testator or intestate cannot be equally, fairly, and beneficially divided among the heirs or devisees of such intestate or testator, without a sale of the real estate, setting out and particularly describing in such petition, the estate proposed to be sold, and the names of the heirs or devisees of such intestate or testator, and particularly stating which are of age, and which are infants, or *femes covert.*

§ 17. Upon the filing of such petition in open court, it shall be the duty of the court to order citations to all the heirs or devisees, who are of full age, and to the husbands of such as are *femes covert,* requiring them to appear on a particular day, mentioned therein, at a regular or adjourned term of said court, [a]not less than forty days from the time of issuing such citations, and answer said petition; and it shall also be the duty of said court, forthwith to appoint guardians to such of the heirs or devisees as are infants, to answer and defend against said petition; which guardian shall not be the petitioner, or of heir to the petitioner.

Ib. Sec. 2. Court to issue citation to heirs.

[a 1806—(1) *Sec.* 28.]

And appoint guardians.

§ 18. It shall be the duty of the guardian or guardians appointed as aforesaid, to deny all the allegations contained in said petition, without being verified by oath; and if necessary to employ counsel to defend for his ward or wards.

Ib. Sec. 3. Guardians to deny allegations, and may employ counsel.

§ 19. Said court shall not decree or order sale of the real estate described in such petition, where the allegations are denied by the answer; unless satisfied by proof to be taken by deposition as in chancery cases, and filed in the cause; and where a sale of the estate shall be ordered or decreed, by the court, commissioners shall be appointed in the order or decree, with directions to sell the estate, either for money, or on credit, as may be most just and equitable, and to report to said court, at the time limited in the order or decree.

Ib. Sec. 4. Proof by depositions.

Commissioners to sell estate.

§ 20. The petitioner shall not receive the bonds or money returned and reported by the commissioners, until he shall enter into bond and sufficient security to be approved by the court, conditioned for the faithful payment and application of the money, arising from such sale, according to the final decree.

Ib. Sec. 5. Petitioner to give bond before receiving the proceeds.

§ 21. The said court shall, upon the coming in of the report of the commissioners, render a final decree in the cause; and if the terms of the sale have been complied with by the purchaser of the estate, the commissioners shall be directed by such final decree to convey the estate sold to the purchaser.

Ib. Sec. 6. Court to render decree. Commissioners to convey.

§ 22. Whenever the court shall, upon a full hearing of the cause, decide that the estate shall not be sold, the judge shall dismiss the petition at the costs of the petitioner, to be levied of his own estate.

Ib. Sec. 7. Petitioner failing, to pay costs.

§ 23. Every executor, administrator, or guardian, empowered by the orphans' court, or supreme, or superior court in chancery, to sell the lands, tenements, and hereditaments, or any part thereof, of any testator, intestate, ward, idiot, lunatic, or person *non compos mentis,* shall, before he or she obtains the order of sale from the office of the register, or clerk, enter into bond with sufficient securities, to the chief justice of the orphans' court, of the proper county, that he or she will observe the rules and directions of law, for the sale of real estates by executors, administrators, or guardians, (as the case may be,) and that he or she will well and truly account for the proceeds of the said sale, and that the same shall be disposed of agreeably to the rules of law.

1806—(1) *Sec.* 30. Executors, &c., to give bond concerning the sale of lands.

§ 24. The executor or administrator, who may be ordered to sell any lands, tenements, or hereditaments, of any testator or intestate,

Ib. Sec. 31. Executor, &c., to give notice of sale by advertisement.

shall give notice by advertisements, put up at three or more public places in the county, where the lands, tenements, or hereditaments are situated, of the time and place of selling the same, at least forty days before the time of sale; and by publishing such advertisements in one of the public newspapers, in this territory, for three weeks successively, before such days of sale.

1823—(10) *Sec.* 1. What sufficient notice of sale when the heir's residence is beyond the state, or is unknown.
[a] *See* § 16 *to* 22.

§ 25. In all cases where petitions may be presented to the judge of any county court for the sale of any real estate, pursuant to the provisions of the above recited act,[a] if the petitioner will make oath, that any of the heirs or devisees live beyond the limits of this state, or that their residence is unknown to the petitioner, a notice by advertisement, published in one or more newspapers, for such length of time, as the judge of the said court may order, shall be deemed and held as sufficient notice, pursuant to the provisions of the aforesaid act, authorizing the sale of real estate.

1821—(4) *Sec.* 22. Inventories to be returned within 3 months.
And account of sales in like time.

§ 26. Executors and administrators, within three months after their appointment, shall return to the clerk's office, a full inventory of all the goods and chattels, rights of, and debts due or accruing to, the testator or intestate, at the time of his death, which have come to their possession or knowledge, setting forth the times at which debts are due, and whether due by open account, promissory note or bond; and within three months after such sale, shall in like manner return an account thereof. Inventories and accounts of sales shall be subscribed and sworn to by the executor or administrator returning the same, before the judge, clerk, or some justice of the peace.

1806—(1) *Sec.* 21. Powers and duties of judge of the orphans' court, in relation to executors, administrators, &c.
Auditing accounts.

§ 27. The chief justice of the orphans' court of the county in which such justice resides, besides presiding in the orphans' court in the term time, is empowered and required, to take, receive, and credit all accounts of executors, administrators, and guardians; to receive wills exhibited for probate, applications for administration, inventories and appraisements; and to order such inventories and appraisements, duly made and sworn to, to be recorded; to appoint guardians to minors, of their own election; to cause to be issued, all citations and other necessary process, returnable to the next term of said court;—And the said chief justice, after examining and auditing such accounts, and causing them to be properly stated, shall report the same for allowance, to the next term of the said orphans' court, the executor, administrator, or guardian, giving at least forty days notice of his intention of having such account presented to the said court for allowance at such term, by posting up notice thereof in three of the most public places in the county, or advertising the same for three weeks at least, in some public newspaper in this territory, whichever, and as the said chief justice shall have directed;[1] and the court, on due proof of notice, as aforesaid, and no exception being made to the report of the chief justice, may decree an allowance of the account as stated; but if any person or persons, interested in the settlement of the said account, shall, by himself or attorney, appear and make exception to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend the mistakes or errors in the account as reported, or refer the same to auditors, who shall examine and restate the account, after hearing parties and witnesses, and make report to the next, or some subsequent term of the said court, for confirmation and allowance as aforesaid.

[1] This notice is now required to be given by the judge. See "Judiciary—County Court."—§ 33.

§ 28. Whenever any executor or executrix, administrator or administratrix, or guardian, shall be cited by the orphans' court, or the chief justice thereof, to appear and settle his accounts, as executor, administrator, or guardian, and shall fail to appear in obedience to the citation, the said orphans' court shall have power to issue an attachment against the person or persons so failing, in the same manner as the superior courts of this territory might or could do, for disobedience to any order, judgment, or decree of said courts; and the said orphans' court shall have power to summon a jury of by-standers whenever it may be necessary, in order to carry into effect the power hereby granted.

1816—(7) *Sec.* 1. Executors, &c., refusing to settle their accounts may be attached.

Proceedings thereon.

§ 29. When two or more have letters of administration granted to them, of any intestate's estate, and one or more of them take all, or the greatest part of such estate, and refuse to pay the debts, or funeral expenses of such intestate, or refuse to account with the other administrator, in such case, the administrator so aggrieved, may have his action of account against the other administrator or administrators; and recover such proportionable share of such estate as shall belong to him; and any executor being a residuary legatee, may have an action of account against his co-executor or co-executors, and recover his part of the estate, in the hands of such co-executor or executors; and any other residuary legatee may have the like remedy against the executors; and any person having a legacy bequeathed in any last will and testament, may sue for and recover the same, at common law.

1806—(1) *Sec.* 42. Action of account may be brought by administrators against each other, and by executors in certain cases.

Remedy by legatees.

§ 30. Where any suit may have been commenced on behalf of or against the personal representative or representatives of any testator or intestate, the same may be prosecuted by or against any person or persons who may afterward succeed to the administration or executorship: such person or persons may, at any time, be made parties on motion, and the cause shall proceed in the same manner, and judgment therein be in all respects as effectual, as if the same were prosecuted by or against the parties originally named. Where any personal representative or guardian shall be displaced, all moneys due to him or her in such right, by execution or otherwise, shall be paid to his or her successor.

1821—(4) *Sec.* 19. Suits may be continued in name of deceased executor, &c.

New parties made on motion.

Payments to successor.

§ 31. When letters testamentary, probate of a will, or letters of administration on the estate of any testator having no known place of residence in this state at the time of his or her death, shall have been duly obtained in any other state, territory, or country, and no personal representative of such testator or intestate shall have been duly appointed and qualified, in this state, the personal representative or representatives so appointed out of this state, may maintain any action, demand and receive any debt, and shall be entitled to all the rights and privileges which he, she, or they, could have done, or would have had, if duly appointed and qualified within this state: *Provided always*, That before the rendition of judgment in any such action, there shall be produced in court where the same is pending, a copy of such letters testamentary, probate, or letters of administration, duly authenticated, according to the laws of the United States in such cases, and the certificate of the clerk of the county court of some county in this state, that such certificate has been duly recorded in his office; and in default of such proof, the court may direct a nonsuit to be entered: *And provided further*, That such foreign representative or representatives shall not be entitled to receive any money so recovered, or any money due to him, her, or them, in such rights, until the copy of the letters testamentary, probate, or letters of administration shall have been recorded as aforesaid, and then shall have been depo-

Ib. Sec. 18. Executors appointed by other states may sue.

Evidence of their right.

To be recorded where judgment is recovered, and bond given before receiving proceeds.

sited in the clerk's office of the county court of the county where such judgment shall have been recovered, or of the county in which the debtor or debtors may reside, a bond in such penalty as the judge of said county court may direct, payable to him and his successors in office, and with such obligors thereto as he may approve, conditioned that such representative or representatives shall faithfully administer, and apply according to law, all moneys and effects received by him, her, or them, in right of such testator or intestate, from any person or persons in this state, and on such bonds, suits may be brought and judgment recovered, as in other cases.

1806—(1) *Sec.* 35. Special pleading not required of executors, &c.

§ 32. Executors, administrators, and guardians, shall not be compelled to plead specially to any action, or suit at law, brought against them in their said capacity, but may under the general issue, give any special matter in evidence. (1)

1826—(15) *Sec.* 1. Mispleading by executor or administrator.

§ 33. So much of the act entitled "An act regulating judicial proceedings in certain cases, and for other purposes," passed December eighteenth, one thousand eight hundred and eleven, as provides that no executor or administrator shall be liable out of their individual estate, for not pleading, mispleading, or false pleading in or to any action whatever, which may be brought against them as such, is hereby repealed.

Ib. Sec. 2. Securities not chargeable beyond assetts for mispleading, &c.

§ 34. No security for an executor or administrator shall be chargeable beyond the assets of the testator or intestate, on account of any omission or mistake in pleading of the executor or administrator.

Ib. Sec. 3. Debtor appointed executor not released.

§ 35. The appointment of a debtor, executor, shall in no case be deemed an extinguishment of the debt, unless it be so directed in the will.

NOTE.—Property not devised or bequeathed by will, is required to be administered, as in case of intestacy. See "Wills,"—§ 7. When lands are directed by will to be sold, and no one is appointed by the testator for that purpose, or being appointed, refuses to act, the sale and conveyance may be made by the acting executor. See "Wills,"—§ 14.

FEES.

1812—(20) *Sec.* 10.

§ 1. The clerks, sheriffs, and other officers, and persons hereafter named, shall be entitled to demand and receive for the services hereinafter mentioned, the fees thereto respectively annexed, and no more, to be paid, taxed, and collected, in manner hereinafter directed, that is to say:

To Clerks of Superior Courts.

Clerk of circuit court.

For every writ, other than those hereinafter particularly specified, with the endorsement,	$— 50
A copy thereof,	18¾
Entering the sheriff's return, or a copy thereof,	12½
Copy of a bail bond,	25
Docketing every cause, to be charged but once,	12½

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(1) Held to extend to an action of covenant against an administrator, and that he may, under a general plea to the merits, give any special matter in evidence. Martin, adm'r *v.* White, 1 *Stewt. Rep.* 473.

Entering the appearance of any party, by attorney or personally, to be charged but once,	12½
For entering special bail in court,	18¾
For a bail piece, if required,	12½
For filing declaration, plea, or demurrer, or other pleadings, for each,	6¼
For entering every rule on the rule docket, at the request of the party, but not otherwise,	6¼
For every order made in court, not otherwise provided for,	25
For a copy thereof, if required,	18¾
For every trial, swearing jury and witnesses, and recording a general verdict,	62½
For every trial where there is a special verdict, case agreed, or points reserved, and swearing jury and witnesses,	75
For entering up judgment, or a copy thereof,	18¾
For every *scire facias*, and recording the return,	50
For every execution *fi. fa.* or *ca. sa.*, and recording the return,	50
For every writ of *elegit*,	30
For recording the return thereof, for every hundred words,	15
For a copy of an execution and return,	25
For recording the award of arbitrators, viewers, auditors, &c. for every hundred words,	15
For every order to witness for attendance, and copy thereof, to be charged to the party for whom he is summoned,	25
For issuing an attachment thereon, for non-payment,	18¾
For taking bonds for injunctions, certiorari, supersedeas, or writ of error,	25
For a copy thereof, if required,	20
For filing such bond,	10
For recording the acknowledgment of satisfaction of a judgment,	12½
For a summons for witness or witnesses,	25
For administering an oath in court, not relating to the trial of a suit there depending, and certifying the same,	25
For the copy of an account, for every hundred words,	12½
For filing every attachment granted by a judge or justice,	10
For each summons for garnishee or garnishees, on such attachment,	18¾
For swearing and taking the examination of a garnishee or garnishees, or any attachment, and entering the same on record,	25
For every subpœna in chancery, or writ of injunction,	50
For filing each bill, answer, or other pleadings in chancery,	12½
For an order to advertise, or order of survey and copy thereof,	37½
For recording a connexion of surveys in a surveyor's report, for every survey laid down in such connexion, with its references,	25
For a copy thereof, each,	12½
For recording the report of a surveyor, for every hundred words,	12½
For a copy thereof, for every hundred words,	12½
For a commission to take depositions,	50
For a copy of interrogatories to accompany such petition, for every hundred words,	12½
For filing the depositions of each party,	12½
For entering a decree in chancery, at large, for every hundred words,	20

For every writ *de idiota inquirenda*, or writ of lunacy,	25
For recording the return, and inquest thereon, for every hundred words,	15
For every writ of *ad quod damnum*, or other writ in the nature thereof,	50
For recording the return, and inquest thereon, for every hundred words,	15
For every writ of *certiorari*, writ of error, prohibition, *mandamus*, or any other writ in the nature thereof,	50
For filing the same with the return,	10
For making a complete record of any cause, after final judgment, for every hundred words, or copy of the same,	12½
For copy of any paper or record, not herein otherwise provided for, for every hundred words,	12½
For a search out of term time, for anything above a year's standing, where no copy is required, and for reading the same,	12½
For taxing costs, or copy thereof,	25
For every necessary certificate to which the seal of office is required, and affixing seal,	50
Taking any and every bond,	50
For every necessary certificate not otherwise provided for, or copy thereof,	12½
For every order of continuance in court,	6¼
For entering finding of indictment, or filing information,	25
For arraigning prisoner, and entering plea,	50
For taking recognizance,	50
For swearing and entering grand juries, issuing summonses on presentments, and informations, and for witnesses, swearing juries, and witness on presentments, and indictment, where the party is not convicted, taking recognizance of prosecutions, witnesses, and defendants, certifying allowances to the sheriffs, constables, and guards, and for all public services not herein otherwise provided for, to be paid from the public treasury on certificates of the court, to which such clerk shall belong, a sum per annum not exceeding	50 00

To the Clerks of the County Courts.

Clerk of the county court.

For the like services by them performed, the same fees as are herein allowed to the clerks of the superior courts.	
For recording the probate of any will, or testament, and for letters testamentary thereon,	1 00
For recording a will, testament, or codicil, for every hundred words,	12½
For administering oath to executors, or administrators, and taking bond, and recording the same,	1 00
For letters of administration, and order granting the same,	1 00
For order appointing appraisers of an estate, and for copy,	25
For recording an inventory, appraisement, for executors, administrators, or guardians' accounts, for every hundred words,	12½
For order for tavern license, and taking bond,	50
For a copy of tavern rates,	25
For issuing a marriage license and taking bond,	1 00

For recording certificate of marriage, to be paid when license is issued,	50
For recording certificate of estray, and copy for advertising at the court-house,	50
For an order binding out apprentice, and copy of the same,	50
For recording indenture of apprenticeship,	50
For filing appeal from a justice of the peace, docketing same, and all services incident thereto in court,	50
For recording a deed of bargain and sale of lands, slaves, or other personal estate, whether by mortgage or not, and every certificate thereon, for every hundred words,	12½
For issuing a commission for taking the privy examination of a *feme covert*, &c. to a deed for lands,	50
For recording the same, with the return thereof, for every hundred words	12½
For recording a letter of attorney with the certificate thereon, or for a copy thereof, for every hundred words,	12½
For recording any bond, note, articles of agreement, or any other writing not herein provided for, for every hundred words,	12½
For a copy thereof, for every hundred words,	12½
For entering and copying orders for viewing and opening roads, for orders appointing overseers of roads, and copying the same, for orders for appointing overseers of the poor, and copying the same, and for all other public services for which no particular fee is herein specified or allowed, to be paid from the public treasury, out of the county funds, on a certificate of the court to which the clerk belongs, a sum not exceeding per annum,	25 00

Provided, That no fee shall be allowed for issuing *scire facias* against defaulting jurors, where they may be excused by the court.

[a] It shall not be lawful for the clerks of the circuit or county courts to demand or receive any fees for swearing and certifying the attendance of any jurors in their respective courts.

[a 1832—(37) Sec. 1.]

[b] Said clerks shall not be entitled to demand a fee from any witness for swearing, or certifying his attendance as a witness, but the fee for such service shall be taxed in the bill of costs, and collected as the other costs may be.

Clerks not to demand fees from jurors for certifying attendance.
[b *Ib. Sec.* 2.]
Nor for witnesses.
Fee to be taxed in bill of costs.

To the Clerk of the Supreme Court.

[c]The clerk of the supreme court of errors and appeals shall be entitled to double the fees allowed by law to the clerks of the superior courts, for like services.

[c 1816—(8) *Sec.* 1.]
Clerk of the supreme court.

To the Sheriffs.

Sheriff.

For levying an attachment on the estate of an absconded debtor,	1 50
For summoning garnishee,	50
For selling property attached, the same as for selling on a *fieri facias*,	
For serving *capias ad respondendum*, or other mesne process,	1 00
For returning writ in sheriff's office,	12½
For returning *capias*, or other mesne process,	12½
For leaving copy of writ with defendant,	25

For taking bail bond, assignment thereof, and returning the same,	50
For summoning each witness,	50
For empannelling a jury in each cause, where a jury is sworn,	25
For executing a *habere facias possessionem*,	2 00
For making a deed to purchaser of real estate, sold or executed,	2 00
For removing a prisoner, for every mile going and returning,	5
For every day's attendance with such prisoner on the judge, in vacation,	2 00
For committing a prisoner to jail, or releasement,	50
For victualling a prisoner per day,[1]	40
For serving a declaration in ejectment, and copy thereof, on each tenant in possession,	1 00
For levying *fieri facias*, and making money thereon, for the first hundred dollars, five per cent.; for all sums above one hundred dollars and not exceeding two hundred dollars, four per cent.; for every hundred dollars over, in said execution, two and one-half per cent.	
For levying *fieri facias*, where sale is stayed by injunction, or supersedeas, or not sold for want of bidders, or other cause, one-half of the above commissions.	
For every *ca. sa.* on each defendant, and commitment,	1 00
For making money on *ca. sa.* same commissions as are allowed on *fieri facias*.	
For executing a condemned person, and all incidents thereto,	10 00
For putting a person in the pillory or stocks, by order of court,	1 00
For whipping a free person by order of court,	2 00
For whipping a slave by order of court, to be paid by the owner,	1 00
For summoning a jury upon any inquisition in the county, and attending on said jury and taking inquest, per day,	2 00
For serving subpœna in chancery, for each defendant,	50
Returning same,	12½
For serving *scire facias* on each defendant,	50
For serving every person with a summons not herein provided for,	50
For serving an attachment for contempt, and returning same,	1 00
For victualling a runaway slave, in jail, per day,[1]	40
For advertising such slave,	1 00
For advertising and selling an estray,	1 00
For taking a bond, in virtue of his office, other than is herein provided for,	50
For taking bonds of every kind,	50
For empannelling grand juries, advertising and attending elections, serving all public orders, of all courts in his county, and for all other public services, not herein otherwise particularly provided for, a sum not exceeding per annum., to be allowed and certified by the superior court, and paid out of the public treasury,	50 00

Provided, That no fee shall be allowed for *scire facias* against defaulting jurors, where the same may be excused by the court.

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[1] For victualling a slave, 25 cents per day (by act of 1833.) See "Prisons and Prisoners,"—§ 19.

To the Coroner.

For taking an inquisition on a dead body,	10 00	Coroner.
For all services done by him, the same fees as are allowed to sheriffs for similar services.		
[a]The fees allowed to coroners for holding inquests, shall be paid out of the county treasuries.		[a 1823—(5) Sec. 36.]

To the Judge of the County Court.

For examining, stating, and reporting each account of executors, administrators, or guardians,	1 00	Judge of county court.
For sheet,[1] more than one, contained in each account,	50	
[b]The judges of the county courts shall take and receive the following fees, to be paid by the party applying for the business, viz:		[b 1821—(4) Sec. 26.]
For granting letters testamentary, or letters of administration,	1 75	
For order of appraisement,	1 00	
For order of sale,	1 00	
For order appointing a guardian,	1 00	
For order removing administrator or guardian,	1 00	
For all necessary orders on writs of *ad quod damnum*,	2 00	
For all other necessary orders in the management and settlement of estates, each,	50	
For all other orders in county business, except when the county or state is directly interested, each,	50	
And on all judgments in civil cases in term time, the tax fee now allowed by law for a jury, shall be paid to the said judges.		
In all litigated cases, respecting wills, mills, and ferries,	2 00	

All of which fees shall be taxed in the bill of costs, and collected by the clerks, and paid over to the judges.

To Notaries Public.

For protesting any bill, registering and seal,	1 50	Notaries public.
For attesting letters of attorney, and seal,	50	
For notarial affidavit to an account or other writing, and seal,	50	
For registering a foreign bill protested, with certificates,	75	
For registering a protest of a bill of exchange, or note, for non-payment or non-acceptance,	50	
For every oath or affirmation, and seal,	50	
For a notarial procuration, and seal,	1 00	
For certifying sales at auction, and seal,	75	
For taking proof of debts, to be sent abroad, or proof and acknowledgment of letters of attorney, and seal,	75	
For protest in insurance cases, and seal,	1 00	

To Counsellors and Attorneys at Law.

For prosecuting or defending a suit in the county court,	4 00	Attorneys at law.
For like services in the superior courts,	6 00	
For prosecuting or defending a suit in chancery,	15 00	

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[1] Act of February 6, 1807. Sec. 2. "A sheet of writing within the meaning of this act, shall contain one hundred words."

For prosecuting or defending a mixed or real action, where the title or bounds of lands are in question, . . 20 00

[a 1814—(4) Sec. 2.] [a]For all sums under two hundred dollars, (in the superior court) the attorney's fee shall be the same as in the county court.

[b 1820—(4) Sec. 4.] [c 1815—(12) Sec. 4.] Successful party entitled to tax-fee. [b]In all cases decided in the supreme court, the successful party shall be entitled to the same fee which is now allowed in chancery causes, in the circuit court: [c]and the party prevailing in any suit which may be brought in any of the courts in this territory, shall be considered as entitled to the tax-fee allowed the attorney, and recover the same against the party cast in the suit.

To the Attorney General and Solicitors.[1]

[1828—(33) Sec. 1.] Fees for prosecuting to conviction slave charged with capital offence. The attorney general and the several solicitors, shall receive the same fees for prosecuting to conviction, any slaves charged with capital offences, as now allowed by law in other cases, and the same shall be paid out of the fund provided for the payment of slaves punished capitally: *Provided*, That no fee for any one conviction shall exceed ten dollars; and no fee shall be allowed by the comptroller, unless the same is certified to be correct by the judge who may preside at the trial.

Ib. Sec. 11. Fees to be taxed in the bill of costs. § 2. The fees herein allowed, shall be taxed and allowed in the bill of costs in all suits where the services respectively shall have been rendered, but not more than one copy of any matter shall be allowed in the bill of costs, neither shall the clerk tax more than one attorney's fee in the bill of costs, although more attorneys than one may have been employed on the same side in the suit; and if any plaintiff or defendant, his or her attorney, shall take out copies of his or her own declaration or pleadings, or of his or her own papers in any cause, or of any common order made in such cause, the charge of such copies shall not be allowed in the bill of costs, although such party recovers.

Ib. Sec. 12. Clerks and sheriffs to keep fee-book. § 3. And to the end that all persons chargeable with any of the fees aforesaid, may certainly know what the same was charged, every clerk and sheriff shall keep a fee-book, which in case of the clerk shall be considered, and is hereby declared to be, one of the books belonging to his office, and shall enter therein in a regular account to be opened for that purpose, every fee for each and every district service by him rendered, charging for every particular article in words at full length, in the same manner as the fees aforesaid; and the said fee book shall be free for the inspection of every person wishing to see the account of fees charged against him therein; and there shall be a regular index made to such book, pointing to the folio, in which the respective accounts are contained; and no clerk or sheriff shall be allowed to take or demand any fee for any service by him performed, which shall not be justified by the charge made, and entered in his fee book as aforesaid.

Ib. Sec. 13. Bill of fees to be produced. § 4. None of the fees hereinbefore mentioned, shall be payable by any person whatsoever, until there be produced, or ready to be produced unto the person owing or chargeable with the same, a bill, or account in writing, containing the particulars of such fees, signed by the clerk or officer to whom such fee shall be due, or by whom the same is chargeable, respectively; in which bill or account, shall be expressed, in words at length, as the fees aforesaid are allowed by this act, every fee for which money shall be demanded; and in all cases where any person shall be presented or indicted by the grand jury, and shall be discharged from such presentment or indictment, neither the clerks nor sheriffs shall charge fees for the same, but it shall be deemed to be included in the public services; but if the party or parties so presented or indicted, shall be convicted, the clerk and sheriff shall charge him, her, or them, with all fees accruing thereon.

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[1] See "Attorney General and Solicitors."

Ib. Sec. 14. Officers taking fees unlawfully, to refund five-fold.

§ 5. If any officer before named, shall take greater or other fees than are hereinbefore allowed them, for any service to be done in his office, or shall demand and take any of the fees aforesaid for services not actually rendered, the officer so offending, shall forfeit and pay to the party injured, five times the sum so unlawfully demanded and taken, to be recovered before any court having cognizance of like sums.

1807—(14) *Sec.* 8. Clerks to issue execution for fees, when not paid.

§ 6. It shall be lawful for the clerks of the several courts within this territory, when suits are determined and fees not paid by the party from whom they are due, to make out executions, directed to the sheriff of the county where the party resides, and it shall be lawful for the registers of the several orphans' courts to make out executions in like manner for the fees that may become due the officers of said courts, by virtue of this act, directed to the sheriff of the proper county; and the said sheriff shall levy the same, by virtue of said execution as in other cases, and to the said execution shall be annexed a copy of the bill of costs, of the fees on which such execution shall issue, written in words at length, without any abbreviation whatever; and all executions issuing without the copy of such bill of costs, shall be deemed illegal, and no sheriff shall serve or execute the same.

Bill of fees to be annexed to execution.

1823—(30) *Sec.* 1. No commissions allowed for collecting costs.

§ 7. It shall not be lawful for any constable, sheriff, or coroner, in this state, to calculate, exact and collect, commissions on the costs taxed on any execution or executions put in their hands; but shall only demand and collect the commissions allowed by law on the principal, damages, and interest.

Ib. Sec. 3. Law of costs, penal.

§ 8. The law of costs shall be deemed and held as a penal law, and no fees shall be taken, but in cases expressly provided for by law.

1829—(9) *Sec.* 1. Clerks to post up in their offices a list of clerks' and sheriffs' fees.

§ 9. It shall be the duty of the several clerks of the circuit and county courts of this state, to have and keep posted up in a conspicuous place in their respective offices, a complete list of all the fees allowed by law to the clerks of the circuit and county courts of this state, and to the sheriffs; and shall also keep a copy ready to be produced on the application of any person who may wish to see the same; and on failing to comply with the provisions of this act, such clerk or clerks, so failing, shall not be authorised to receive or collect any fees for any services rendered during the time of such failure.

To Justices of the Peace.

1829—(2) *Sec.* 1. Justices' fees.

§ 10. Justices of the peace shall be entitled to demand the following fees for their services, and not other or more, to wit:

For celebrating the rights of matrimony, . . .	$2 00
For warrant to apprehend a person or persons charged with an offence against the state, ...	37½
For a search or peace warrant, ...	25
For a warrant in civil cases, and proceedings thereon to judgment, ...	37½
For a warrant in *qui tam* cases, and proceedings thereon to judgment, ...	50

For every subpoena for witness or witnesses,	12½
For each execution, and taxing costs thereon,	37½
For each attachment, taking bond and affidavit,	1 00
For summons for garnishee and taking examination,	37½
For judgment and order of sale on attachment,	25
For hue and cry,	25
For each appeal, including bond and certifying proceedings,	75
For taking each stay or other bond,	25
For administering an oath, and certifying the same,	12½
For taking depositions by virtue of a dedimus potestatem, for every hundred words,	10
For every necessary certificate, not otherwise provided for by law,	25
For docketing each cause,	6¼
For each judgment on a forthcoming bond, or summary proceeding without warrant,	25
For a transcript of proceedings when required, other than those sent up on appeal,	25
For issuing a *venire facias*, to try the right of property,	50
For attending on the trial of the right of property,	50
For summons and certificate of appraisement of estray or estrays,	50
For each notice or *scire facias*, or summons in the nature thereof,	25
For making a return to a certiorari (other than in cases of forcible entry and detainer,)	50

§ 11. Justices of the peace shall be entitled to demand and receive the following fees, in cases of forcible entry and detainer, forcible detainer, and unlawful detainer, viz:

Ib. Sec. 2. Justices' fees in forcible entry and detainer.

For every summons,	30
For every *venire facias*,	40
For entering copies of complaint, summons, *venire facias*, and evidence offered and rejected, and received when objected to, being a complete record of the cause,	2 00
For subpœna for witness,	12
For swearing the jury,	20
For administering every oath or affirmation,	6
For entering every verdict,	12
For entering every judgment,	12
For presiding on every trial,	2 00
For issuing a writ of restitution,	25
For return to every certiorari,	1 00

To Constables.

Ib. Sec. 3. Constables' fees.

§ 12. It shall not be lawful for constables to demand or receive any other fees, for their services, than such as are hereinafter mentioned, viz:

For serving a warrant in civil cases,	50
For summoning each witness,	25
For serving search, peace, or other state warrant,	50
For conveying a criminal to jail per mile,	10
For levying an attachment,	75
For levying an execution,	50
For making the money on each execution,	50
For conveying a debtor to jail,	50
For whipping a slave (to be paid by the owner) by order of a justice of the peace,	1 00

For summoning a coroner's inquest, (to be paid by the county,)	$2 00
For attending court, when summoned by the sheriff (to be paid by the county) per day, ...	1 50
For serving each notice, on each person therein named,	25
For serving *scire facias* on each person therein named,	50
For taking bail bond, bond for the forthcoming of property, or other bond required by law, ...	50
For keeping property levied on, such sum as the justice believes just and reasonable, out of the money in the hands of said constable, arising from a sale of said property, or received by reason of said levy.	

Ib. Sec. 4. Other services, *ex officio.*

§ 13. Any other service performed by any justice or constable, for which no fee is allowed in this act, shall be considered *ex officio*, and no fee allowed, had, demanded, or received for the same.

1829—(14) *Sec.* 1. Officers taking fees unlawfully, liable to indictment.

§ 14. If any sheriff, coroner, clerk, constable, justice of the peace, or other officer, shall wilfully and knowingly take, accept, or receive, any other or greater fees than are or may be allowed by law, for anything done by virtue of his office, or shall take, accept, or receive the fees allowed by law before they are due, or for services not rendered, every officer so offending shall be subject to indictment in the circuit court of the proper county, and on conviction, be fined in such sum as may be assessed by the jury trying the same, which fine shall not be less than five times the amount so wilfully, knowingly, and wrongfully taken.

FENCES AND ENCLOSURES.

1807—(2) Cattle, &c., breaking into enclosures.

What a lawful fence.

§ 1. If any horses, mares, mules, cattle, hogs, sheep, or goats, shall break into any grounds, enclosed with a strong and sound fence, five feet high, well staked and ridered, or sufficiently locked, and so close that the beasts breaking into the same could not creep through, which shall be deemed a lawful fence; the owner of such horses, mares, mules, cattle, hogs, sheep, or goats, or any of them, shall for the first trespass so committed, make reparation to the party injured, for the true value of the damage he shall sustain; and for every trespass afterwards, double damages; to be recovered with costs, in any court of record.

Condition of the fence, how proved.

§ 2. The condition of the fence, at the time the trespass was committed, may be proved to a jury upon trial; and upon complaint made by the party injured, before any justice of the peace of that county wherein such trespass shall be, such justice is hereby empowered and required to issue his order, without delay, to three honest and respectable house-holders of the neighborhood, no ways related to the parties injured, nor interested concerning the trespass, reciting the complaint, and requiring them to view the fence, where the trespass is complained of, and to take memorandums of the same. And their testimony in such case, shall be good evidence to the jury, touching the lawfulness of the fence.

Penalty for injuring cattle that trespass on insufficient fence.

§ 3. If any person injured for want of such sufficient fence, shall hurt, wound, lame, kill, or destroy, or shall cause to be hurt, wounded, lamed, killed, or destroyed, by shooting, hunting with dogs, or otherwise, any of the kind or breed of horses, mules, cattle, sheep, hogs, &c.; he or she so offending, shall satisfy and pay the owner of the beasts so hurt, wounded, lamed, killed, or destroyed, double damages, with costs, recoverable as aforesaid: *Provided nevertheless*, That if the party liable to damages, as aforesaid, in either case, will abide by and pay what shall be deemed reasonable by three neighbors, indifferently chosen to assess the same, it shall be a bar against such suit.

Partition fences.

§ 4. For the better ascertaining and regulating of partition fences, it is hereby directed, that where any neighbors shall improve lands adjacent to each other; or where any person shall enclose any land, adjoining to another's land already fenced in, so that any part of the first person's fence becomes the partition fence between them; in both these cases, the charge of such division fence, so far as enclosed on both sides, shall be equally borne and maintained by both parties. To which, and other ends, in this law mentioned, each county court shall nominate and appoint, so many honest and able men, as they shall think fit, for each county respectively, to view all such fences, about which any difference may happen or arise. And the aforesaid persons, in each county respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both, or either party; and of the sufficiency of all fences, whether partition fences, or others. And where they judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the said owners or possessors, upon the request of the other, and due notice given by the said reviewers, shall refuse to make or repair the said fence or fences, or to pay the moiety of the charge of any fence before made, being a division fence, within ten days after notice given; then, upon proof thereof before two justices of the peace of the respective counties, it shall be lawful for the said justices to order the person aggrieved and suffering thereby, to repair the said fence or fences, who shall be reimbursed his costs and charges, from the person so refusing to make good the said partition fence or fences, and the said costs and charges shall be levied upon the offender's goods and chattels, under warrant from the said justice, by distress and sale thereof; the overplus, if any, to be returned to the party offending.

Enclosure by pallisadoes, dikes, hedges, &c.

§ 5. Nothing herein contained shall be intended to prevent or debar any person or persons, from enclosing his or their grounds, with sufficient walls or pallisadoes, or by dikes, hedges, and ditches:—all such walls, and pallisadoes to be in height, at least five feet from the ground; and all such dikes to be at least three feet in height from the bottom of the ditch, and planted or set with thorn or quickset; so that such enclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *Provided also*, That such walls and pallisadoes, and dikes, hedges, and ditches, shall be subject to all provisions, inspection, and restrictions respectively, to which, by this law, any other enclosure or fence is made liable, according to the true intent and meaning thereof.

FINANCIAL DEPARTMENT.

1. *Accounts and disbursements.*
2. *Collection of public dues.*

1. ACCOUNTS AND DISBURSEMENTS.

Con. Ala. Art. 6, *Sec.* 7.

§ 1. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

§ 2. There shall be appointed by the governor, an auditor of public accounts,[1] who, before he shall be qualified to act, shall take an oath, impartially and honestly to discharge the duties of his office, and shall give bond, with two or more sufficient securities, payable to the governor for the time being, and his successors in office, in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duties of the said office. The said auditor shall keep his office in the place designated by law for the sitting of the general assembly.

1806—(2) *Sec.* 1. Oath and bond of auditor.

Office at seat of government.

§ 3. It shall be the duty of said auditor to examine, state, settle, and audit all accounts, claims, or demands whatsoever, against the territory, arising under any law or resolution of the legislature; and to grant to every claimant, authorized to receive the same, a warrant on the territorial treasurer, under his hand and seal of office; making due entry and register of all his proceedings, in a book to be kept for that purpose; and carefully arranging, filing, and preserving in his office, all accounts, receipts, vouchers, and papers touching the same; to examine, settle, and audit the accounts of all public debtors, collectors of any tax or revenue, levied by act of the legislature, and payable to the territorial treasurer; to call upon all such debtors, to render accounts, and pay into the treasury all sums and balances due, and, on their failure so to do, to institute proceedings against them at law; to require information on oath from any person, party or privy, of any matter relative to any account under his examination, and material for his information; to state and keep the accounts, so as to show the amount of all warrants by him drawn on the treasurer, for what services or articles of public expense they were given; and to lay before the general assembly annually, and as often as thereto required, the general accounts, together with an account of all balances due to and from the territory.

Ib. Sec. 2. Auditor's duties.

§ 4. It shall be the duty of said auditor to decide on the official forms of all papers to be issued for collecting the public revenue, and the manner and form of keeping the accounts of persons employed therein; and the books and accounts of the treasurer, and all other persons concerned in the collection and safe-keeping of the public moneys or funds of this territory, shall at all seasonable times, be open to the examination and inspection of the said auditor.

Ib. Sec. 3. To furnish forms, and regulate and examine books and accounts.

§ 5. It shall not be lawful for the territorial treasurer to pay or receive any public money but on warrant or certificate from said auditor, who shall begin on the first day of January annually, and number each warrant for the payment of money, beginning at number one, and continuing progressively until the last day of December following, inclusively.

Ib. Sec. 4. No money to be paid or received, but on warrants.

§ 6. The said auditor shall procure a seal of office, the legend of which shall be "Mississippi Territory, Auditor's Office." Also, all books and stationary necessary for the use of his office, and the accounts for the said seal, books and stationary, shall be audited and paid to said auditor, by the territorial treasurer, without warrant; and the said seal and books shall appertain to the said office, and be delivered over by said auditor, his executors or administrators, to his successor.

Ib. Sec. 8. Auditor's seal of office.

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[1] The duties and responsibilities of this officer, now appertain to the "Comptroller of public accounts." (See § 11.) The comptroller is elected annually by the general assembly. Con. Art. 4, Sec. 23.

1807—(15) *Sec.* 1. No warrant to issue without appropriation.

§ 7. No warrant shall ever be issued by the auditor of public accounts, until after provision has been made by law, for the allowance or pay of such demand.

Ib. Sec. 2. Auditor's warrants to be special.

§ 8. It shall be the duty of the auditor of public accounts, to draw special warrants on the territorial treasurer, when he shall be thereto required, for all moneys of whatever amount, which by law are directed to be paid out of the territorial treasury, but by special warrant; which warrant shall express on what particular account such money is due by the territory. And it shall be the duty of the territorial treasurer to examine whether such warrant has been issued agreeably to law, before he shall pay the same, and after making due examination, if he shall find such warrant has been issued agreeably to law, he shall pay such warrant to the person legally entitled to receive the same, taking his or her receipt thereon; and shall also make a proper entry in his books, of each and every such warrant, and shall keep the same regularly filed in his office; and it shall be the duty of the auditor to take a receipt for every warrant so issued by him, and to keep the same regularly filed in his office.

Treasurer's duty when warrant is presented.

1809—(8) *Sec.* 3. Auditor to report to treasurer monthly.

§ 9. It shall be the duty of the auditor of public accounts, to render to the territorial treasurer, monthly, an account of all warrants that shall have been issued by him on the territorial treasurer during the preceding month.

1815—(15) *Sec.* 21. Annual reports.

§ 10. The annual reports of the auditor of public accounts and of the territorial treasurer, shall be made up to the first of November in every year.

1819—(9) *Sec.* 5. Comptroller.

§ 11. The comptroller of public accounts shall perform the duties, and be subject to the responsibilities heretofore appertaining to the office of auditor of public accounts.

1826—(14) *Sec.* 1. Comptroller to settle accounts and publish defaulters.

§ 12. It shall be the duty of the comptroller of public accounts to adjust and settle all public accounts which are now, or hereafter may remain due and unpaid, for the space of one year, and to publish in some newspaper published at the seat of government, a list of the names of the respective defaulters, and the amount due to the state from each, how the debt accrued to the state, and when the same became due and payable.

Ib. Sec. 2. Defaulters' claims to be deducted out of their debts.

§ 13. It shall not be lawful for the comptroller or treasurer to pay to any public defaulter, any sum of money which may be due to such defaulter, for his salary, per centage, or commission; but it shall be the duty of the comptroller and treasurer to retain the moneys due the state from all public defaulters, out of their salaries, &c.; and at the expiration of every year, to apply the sum or sums so retained to their credit, till the whole debt and interest so due by them shall be fully paid and satisfied.

1827—(14) *Sec.* 1. Comptroller to report disbursements from contingent fund.

§ 14. It shall be the duty of the comptroller of public accounts to lay before both houses of the general assembly, annually, in the first week of its session, a full expose of the disbursements made from the contingent fund, to whom paid, and for what services.

1827—(35) *Sec.* 1. Revenue law distributed annually.

§ 15. It shall be the duty of the comptroller of public accounts, immediately after the adjournment of the general assembly in each year, to have the revenue law printed, and a copy certified by the secretary of state, and one sent to each of the tax-collectors, and clerks of the county courts in the several counties in this state.

1830—(5) *Sec.* 1. Comptroller's and treasurer's offices to be examined annually.

§ 16. The comptroller's and treasurer's offices shall be examined annually, by a joint committee of three members from each branch of the legislature, who shall report to their respective houses, the condition of said offices, and whether the comptroller and treasurer have discharged their duties strictly, according to law.

2. Collection of Public Dues.

§ 17. When any collector of the revenue, or other person accountable for public money, shall neglect to pay the same into the treasury, by the time which by law he shall be required to do, it shall be the duty of the comptroller of public accounts, immediately to institute suit for the recovery of the same, by notifying such delinquent collector or other person, his security or securities, their executors or administrators, that he will, by the attorney-general, on such a day as shall be named in such notice, before the circuit court of Tuscaloosa county, move for judgment against him or them, and his security or securities for the amount due to the state. And service of such notice shall be made on the defendant or defendants, by the sheriff of the county where the defendant or defendants may be found, at least fifteen days previously to the day on which the motion shall be made; and it shall be the duty of the sheriffs of the several counties respectively, on the receipt of every such notice, immediately and without delay, to execute the same, by serving the defendant or defendants with a copy thereof, and to return the original with an account of his proceedings on the back thereof, to the clerk of the circuit court of Tuscaloosa county, on or before the day appointed for such motion to be made; for which service the sheriff shall be entitled to receive the same pay that is allowed for the service of writs, and the notice so served and returned, shall be deemed the leading process in the suit.

1820—(11) *Sec.* 1. Proceedings against holders of public money.

Comptroller to give notice,

to be served by sheriff.

§ 18. It shall be the duty of the judge of the circuit court for the circuit embracing the county of Tuscaloosa, on the request of the comptroller for that purpose made, to hold a special session of said court at the town of Tuscaloosa, for the purpose aforesaid, and in such case the judge shall issue his warrant, under his hand and seal, directed to the clerk of said court, who shall thereupon give notice to the attorney-general, and the other officers of the court, and shall issue all necessary process, returnable to said special session, which process the sheriffs of the several counties respectively, to whom the same may be directed, shall be bound to execute, under the same limitations and restrictions as in the case of a regular court in course.

Ib. Sec. 2. Special court to be held on request of the comptroller.

§ 19. In every case of delinquency, where suit shall be instituted as aforesaid, a transcript from the books and proceedings of the comptroller, authenticated under the seal of his department, shall be admitted as evidence, and the court trying the cause, shall be thereupon authorized to grant judgment for the amount due the state, together with fifteen per centum damages, and interest of eight per centum per annum, from the day on which the same became due, and award execution accordingly. And all copies of bonds, contracts, and other papers, relating to, or connected with the accounts between this state and any individual, when certified by the comptroller to be true copies of the originals on file, and authenticated under the seal of his department as aforesaid, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit, which would be due to the original papers, if produced and authenticated in open court: *Provided*, That when suit is brought upon bond or other sealed instrument, and the delinquent shall plead *non est factum*, or upon motion to the court, such plea or motion being verified by the oath of the defendant, it shall be lawful for the court to take the same into consideration; and if it shall appear to be necessary for the attain-

Ib. Sec. 3. Transcript from comptroller's books, sufficient evidence.

Damages and interest.

Copies of bonds, &c. authentic as originals.

In certain cases court may order production of the original.

ment of justice, to require the production of the original bond, contract, or other paper, specified in such affidavit.

Ib. Sec. 4.
Judgment at return term.
Ground of contiuuance.
Trial of issue by jury.

§ 20. When suit shall be instituted as aforesaid, against any person or persons indebted to this state as aforesaid, it shall be the duty of the court to grant judgment at the return term on motion; unless the defendant shall in open court, the attorney-general being present, make oath or affirmation, that he is equitably entitled to credits which have not been allowed him, specifying each particular credit in the affidavit, and that he cannot then come safely to trial; oath or affirmation to this effect being made, subscribed and filed, if the court be thereupon satisfied, a continuance until the next succeeding term may be granted, but not otherwise: *Provided,* That in all cases where the defendant shall appear and contest the claim of the state, and demand the benefit of a trial by jury, the court shall *instanter* empannel a jury, if at a special session, of by-standers, to try the issue, and give judgment accordingly.

Ib. Sec. 5.
State to have preference in case of insolvency.
Sureties paying debt, to have like preference.
Includes property assigned or attached.

§ 21. In all cases of insolvency, or when any estate in the hands of the executors, administrators, or assignees, shall be insufficient to pay all the debts due from the deceased to the state, the debt or debts due to the state shall be first satisfied; and any executor, administrator, or assignee, or other person, who shall pay any debt due by the person or estate, from whom, or for which they are acting, previous to the debt or debts due to the state from such person or estate, being first duly satisfied and paid, shall become answerable in their own person and estate, for the debt or debts so due to the state, or so much thereof as may remain due and unpaid; and actions or suits at law may be commenced against them for the recovery of said debt or debts, or so much thereof as may remain due and unpaid, in the proper court having cognizance thereof: *Provided,* that if the principal in any bond which shall be hereafter given to this state, shall become insolvent, or if such principal being deceased, his or her estate and effects, which shall come to the hands of his or her executors, administrators, or assignees, shall be insufficient for the payment of his or her debts, and if in either of said cases, any surety on the said bond or bonds, or the executors, administrators, or assignees of such surety, shall pay to the state the money due upon such bond or bonds, such surety, his or her executors, administrators, or assignees, shall have and enjoy the like advantage, priority, or preference, for the recovery and receipt of the said moneys out of the estate of such insolvent or deceased principal, as are reserved and secured to the state, and may bring and maintain a suit or suits upon the said bond or bonds, in law or equity, in his, her, or their own name or names, for the recovery of all moneys paid thereon. And the cases of insolvency mentioned in this section, shall be deemed to extend to cases in which a debtor, not having sufficient property to pay all his or her debts, shall have made a voluntary assignment thereof, and to cases in which the estate and effects of an absconding, concealed, or absent debtor, shall have been attached by process of law.

Ib. Sec. 6.
Contents of lost bond, &c. may be proved.

§ 22. If any bond, contract, or other paper, relating to, or connected with any account between this state and any individual, has been, or hereafter shall be, lost or mislaid, so that the same cannot be produced in court, it shall be lawful for the court to receive evidence of the fact, and of the contents of such bond, contract, or other paper; and such evidence shall be entitled to the same degree of credit, which would be due to the original papers if produced and authenticated in open court.

§ 23. Nothing in this act shall be construed to repeal, take away, or impair any legal remedy or remedies for the recovery of debts now due, or hereafter to be due to this state, in law or equity, from any person or persons whatever, or to defeat any suit or suits now pending in behalf of the state against any person or persons whatever, which remedy or remedies might be used if this act was not in force.

Ib. Sec. 7. No remedies taken away by this act.

Note.—For the mode of proceeding against tax-collectors, failing to make returns—See "Taxes."

FINES, FORFEITURES, AND PENALTIES.

§ 1. In all prosecutions for offences less than capital, no person shall, on conviction, be fined in a greater sum than shall be assessed by the verdict of a jury; and in all cases, where the defendant or defendants to any indictment whatsoever, shall plead guilty, the court before whom the prosecution is depending shall forthwith empannel a jury to assess the fine, which shall be inflicted on such defendant or defendants.

1807—(6) *Sec.* 53. Jury to assess fines.

§ 2. All fines and forfeitures which may be recovered by virtue of this act,[1] shall be collected by the sheriff of the county where the offender is tried, [a]or of that in which he may reside, and accounted for in the same manner that public taxes are or may be accounted for; and whenever the court, before whom any offender or offenders may be tried and fined by the verdict of a jury, shall be of opinion that such offender or offenders, is or are unable to pay the fine so inflicted, and that his, her, or their imprisonment will operate to increase the public expenditure, the said court are hereby authorized and required to discharge him, her, or them, from custody.

Ib. Sec. 56. Where to be collected. [a *Sec.* 44 *of this act.*] Imprisonment for fines.

§ 3. The clerks of the several courts within this territory shall, immediately after the rising of the respective courts, issue execution in all cases in which executions are issued by law, for the fines, forfeitures, and amercements, that may have accrued to the territory, and unpaid previous to the rising of such court, ([b]and shall make out and certify to the auditor of public accounts, and county treasurer respectively, a fair abstract of all fines, amercements, and penalties, which shall be assessed, had, or recovered in his court, immediately after the end of every term, specifying therein the names of the persons, the amount of the judgment, and offence for which the recovery is had, and shall, within one month after the rising of such court, cause the same to be transmitted to the auditor and county treasurer respectively,) together with the name of the sheriff or other officers that shall have become liable to pay the same by law, to enable said auditor to call them to account. And every clerk failing to perform the aforesaid duty, shall forfeit and pay the sum of two hundred dollars, to be recovered by the auditor of public accounts, on motion to the supreme court,[2] and applied to the use of the territory: *Provided*, that ten days' notice in writing be given of every such motion.[3]

1808—(1) *Sec.* 1. Clerks to issue execution for fines, [b 1812—(20) *Sec.* 6.] and certify abstract to auditor and county treasurer. Penalty for neglect of duty.

§ 4. If any sheriff or other officer shall make return upon any writ of *fieri facias*, or *venditioni exponas*, that he hath levied the fine, forfeiture, or amercement, as in such writ is required, or any part

Ib. Sec. 2. Sheriffs, &c. liable to judgment on motion, for not accounting for fines received by them.

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[1] See the several sections of the act of 1807—(6). Title, "Crimes and Misdemeanors."

[2] Or superior court of law and equity.—See § 8.

[3] All fines are now payable into the county treasury.—See § 10.

thereof, or shall return upon any writ of *capias ad satisfaciendum*, that he hath taken the body or bodies of the defendant or defendants, or hath the same ready to satisfy the fine, forfeiture, or amercement, in such writ mentioned, or have suffered him, her, or them to escape; or if any person shall be committed to the custody of such officer, by any of the courts of this territory, until the fine, forfeiture, or amercement, for which he, she, or they were committed, shall be paid, and shall suffer him, her, or them to escape, or shall actually have received the same, and shall not in every such case immediately, or as soon as may be, account to the auditor, and pay the same into the territorial treasury, then, and in each of said cases, it shall be lawful for the auditor of public accounts, upon motion in the supreme court, to demand judgment against such sheriff or other officer, or their securities, for the fine, forfeitures, or amercements, mentioned in such writ, or for so much as shall be returned levied, or for the amount for which the defendant or defendants shall have been committed, and such court is hereby authorized and required to give judgment accordingly, and award execution thereon: *Provided*, Such sheriff or other officer have ten days previous notice of such motion.[1]

Ib. Sec. 4. Clerks to pay to auditor semi-annually, the amount received for taxes on suits. Penalty for neglect.

§ 5. It shall be the duty of the clerks of the several courts within this territory, on or before the first day of May and November, in every year, respectively, to account on oath to the auditor of public accounts, and pay into the territorial treasury the amount of all taxes that shall become due from them by law, on law process and suits; and if any clerk shall neglect or refuse so to account, and pay as aforesaid, then, and in such case, it shall be lawful for the auditor of public accounts, on motion made in the supreme court, to demand judgment against such clerks or their security, for double the amount of taxes that may be due and owing from said clerk by law, which he shall ascertain from the truest information he can get of the same, and such court is hereby authorized and required to give judgment accordingly, and award execution thereon: *Provided*, Such clerk have ten days previous notice of such motion.

Ib. Sec. 5. Fines, &c. to be paid over in like manner.

§ 6. If any clerk of any of the courts of this territory, shall receive any fine, forfeiture, or amercement which shall come into his hands by law, he shall account for and pay the same in like manner, and be subject to the same remedy and proceedings against him for default, as is directed by this act, in case of taxes on law process.

Ib. Sec. 6. Justices subject to the same responsibilities as clerks.

§ 7. All fines imposed by law, and collected by any justice of the peace in behalf of this territory, shall be accounted for by such justice, and paid in like manner, and subject to the same remedy and proceedings against him for default as is directed by this act, in case of fines received by clerks.

1812—(21) *Sec.* 1. Circuit court empowered to give judgment against clerks, &c.

§ 8. The superior court of law and equity, in each county within this territory, shall have power to give judgment and award execution against any clerk of a court for a failure to comply with the requisitions of the first section of the act to which this is an amendment,[a] in the same manner that the supreme court formerly could have done.

[a] *See* § 3.

Ib. Sec. 2. Sheriff not liable for the casual escape of a prisoner.

§ 9. No sheriff or coroner, as the case may be, shall be liable to pay the fine, forfeiture, or amercement which may have been imposed by any court of this territory, against any person who shall have been committed to his custody, by the court imposing the same, or where any person shall be taken in execution to satisfy any fine, forfeiture, or amercement, unless such sheriff or coroner shall have received the money, or suffered a wilful or negligent escape; but whenever the proper tribunal shall have discharged any person who was committed or taken in execution as aforesaid, or such person shall have escaped without any connivance or neglect of the sheriff or coroner, (as the case may be,) upon proof thereof made to the superior court of law and equity, of the county where such person has been in custody, such court shall certify the same to the auditor of public accounts, who shall release such officer from the fine, and forfeiture, or amercement with which he may have been charged, on account of such person committed by the court, or taken in exeution as aforesaid.

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[1] The third section of this act requiring fines, &c. to be paid in gold, silver, or territorial warrants, was repealed by sec. 1 of act of Dec. 17, 1821, and by sec. 13 of act of Dec. 20, 1823.—See "Banks,"—§ 1, and "Bank of the State of Alabama,"—§ 13.

1815—(5) *Sec.* 3. Fines, &c. to be paid into the county treasury.

§ 10. All fines and forfeitures shall hereafter be paid into the county treasury, and not into the territorial treasury; and the clerks of the courts shall return to the county treasury of their respective counties, an account of fines and forfeitures, in the same manner, and at the same time, that they are now by law required to return the same to the auditor of public accounts, and to pay over the money when collected to said county treasurer, at the same time, and in the same manner, they are now by law required to pay the same into the territorial treasury; and the county treasurer is hereby required to proceed immediately against any officer who shall fail to comply with the provisions of this section.

County treasurer to proceed against delinquents.

1822—(4) *Secs.* 1 & 3. Governor may grant pardons and remit fines and forfeitures.

§ 11. The governor of this state, or person exercising that office, is hereby authorized and empowered, in all criminal and penal cases, except those of treason and impeachment, to grant pardons and reprieves, and to remit all fines and forfeitures, or so much thereof as he may deem expedient, which have accrued, or may hereafter accrue, to this state or to any county thereof: *Provided,* Said fine or forfeiture be not collected and paid into the state or county treasury. [See Const. Ala. Art. 4, *Sec.* 11.]

NOTE.—For the mode of recovering and appropriating penalties, when the particular act creating them points out none,—See "Judicial proceedings at common law,"—§ 87, 88, 89.

FIRE-HUNTING.

1822—(5) Penalty for fire-hunting.

§ 1. IT shall not be lawful for any person or persons to hunt with fire in the night-time; and every person convicted thereof, shall forfeit and pay for every such offence, the sum of fifty dollars; one-half to go to the use of the informer, and the other half to go to the use of the county: *Provided,* That this act shall be construed only to embrace persons hunting deer with a gun and fire at night.

1803—(1) Double damages for cattle killed.

§ 2. If any person hunting with fire in the night-time shall kill any horse, mare, colt, neat-cattle, hog, sheep, or other domestic animal, not being his own, the person or persons so offending, shall be liable to an action at law, for double damages to the person aggrieved, in addition to the above penalty.

Slaves hunting to be whipped.

§ 3. If any slave or slaves shall be discovered fire-hunting in the manner aforesaid, such slave or slaves, on conviction thereof, in manner aforesaid, before any one justice of the peace,[1] for the county wherein the offence may be committed, shall, by order of said justice, receive thirty-nine lashes well laid on, on his bare back; and the master or owner of said slave, or person in whose care he shall be, shall forfeit and pay the sum of ten dollars for each slave so convicted, to be levied by a warrant, immediately to be issued by such justice for the purpose.

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[1] The penalty imposed by the act of 1803 for fire-hunting, was a fine of twenty dollars, or on failure of the person convicted to pay the fine, impri-

Persons sending slaves to hunt, liable.

§ 4. If any person shall be convicted, before two justices of the peace, in manner aforesaid, of sending or having sent his or her slave, or any slave in his charge or care, to fire-hunt, in manner before mentioned, the person or persons so offending, shall be subject to the same pains as are provided by this act to be inflicted on fire-hunters, but the slave so sent shall receive no punishment.

How to compel witnesses to testify.

§ 5. If any person summoned to give evidence against any person accused under this act, shall refuse or neglect to give such evidence, the person so refusing or neglecting, shall be committed to the jail of the county where the offence shall be committed, until he or they shall give testimony against the said offender.

Not to repeal former act.

§ 6. Nothing contained in this act shall be construed to affect any provisions contained in the act entitled "An act for the punishment of crimes therein mentioned," passed the thirteenth of January, 1802.[1]

This act to be read to the militia.

§ 7. The captains of the several companies of militia in this territory, shall cause this act to be read at the head of their respective companies twice in every year, after the publication thereof, under the penalty of forfeiting to the use of the county, for every such neglect, five dollars, recoverable by warrant of any justice of the peace, on the oath of two reputable witnesses.

FORCIBLE ENTRY AND DETAINER. (1)

1805—(3)
Entries to be peaceable.

§ 1. No person shall enter upon any lands, tenements, or other possessions, and detain or hold the same, but where entry is given by law; and then only in a peaceable manner.

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sonment, without bail, not less than one, nor more than three months; this punishment was provided only in case of fire-hunting "within four miles of any settlement," and might be inflicted, by "any two justices of the peace, of the county wherein the offence was committed, by oath of one or more credible witnesses." Sec. 1.

[1] See 1807—(6), title "Crimes and Misdemeanors," originally passed in June, 1802, but re-enacted with amendments in 1807.

(1) The following points have been decided under this statute:

1. A tenant at will may maintain a writ of forcible detainer. McDonald *v.* Gayle, *Min. Rep.* 98.
2. The record must show that the plaintiff has had actual possession. Childress *v.* McGehee, *ib.* 131.
3. To establish possession, the plaintiff may prove a tenancy under him, and possession by his tenant. Lecatt *v.* Stewart, 2 *Stewt. Rep.* 474.
4. In a complaint of unlawful detainer, the possessory title of the plaintiff was good, but defectively described:—held good after verdict. Payne *v.* Martin, 1 *Stewt. Rep.* 407.
5. The county court has no jurisdiction by certiorari or appeal, in cases of forcible entry and detainer. Dunham *v.* Carter and Carroll, 2 *Stewt. Rep.* 496.
6. It is discretional with the judge to require bond and security on granting a certiorari; and the court may order a new bond to be taken. Childress *v.* McGehee, *Min. Rep.* 131.
7. When removed, the cause is not triable *de novo*, but on the justices' record, without a jury. McDonald *v.* Gayle, *Min. Rep.* 98. Dunham *v.* Carter and Carroll, 2 *Stewt. Rep.* 496.

What amounts to a forcible entry and detainer.

§ 2. If any person shall enter upon, or into any lands, tenements, or other possessions, and detain and hold the same, with force or strong hand, or with weapons; or by breaking open the doors, windows, or other part of a house, whether any person be in it or not; or by any kind of violence whatsoever; or by threatening to maim, kill, or beat the party in possession; or by such words, circumstances, or actions as have a natural tendency to excite fear or apprehension of danger; or by putting out of doors, or carrying away the goods of the party in possession; or by entering peaceably, and then turning by force the party out of possession; or by frightening by threats, or other circumstances of terror; in such case, every person so offending shall be guilty of a forcible entry and detainer, within the meaning of this act.

Forcible detainer.

§ 3. No person who shall lawfully or peaceably enter upon or into any lands, tenements, or other possessions, shall hold or keep the same unlawfully, and with force, or strong hand, or weapons, or violence, or menaces, or terrifying words, circumstances, or actions aforesaid; and it is hereby declared, that whatever words or circumstances, conduct or actions, will make an entry forcible under this act, shall also make a detainer forcible.

All estates included.

§ 4. The three preceding sections of this act shall extend to and comprehend terms for years, and all estates, whether freehold, or less than freehold.

Tenants holding over, guilty of unlawful detainer.

§ 5. If any tenant or tenants, for term of life or lives, year or years, or other person or persons, who are or shall be in possession of any lands, tenements, or hereditaments, by, from, or under, or by collusion with such tenant or tenants, shall wilfully and without force, hold over any lands, tenements, or hereditaments, after demand and notice in writing given for the delivery of the possession thereof, by his, her, or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, his, her, or their agent or attorney thereunto lawfully authorized, then such person or persons so holding over, shall be guilty of an unlawful detainer.

Cognizable before justice of the peace.

§ 6. The aforesaid forcible entries and detainers, and unlawful detainers, are hereby made cognizable before any justice of the peace of the county in which they are committed.

On complaint made, justice to issue a *venire.*

§ 7. When complaint to any justice of the peace of the proper county shall be made in writing, and signed by the party aggrieved, his agent, or attorney, specifying the lands, tenements, or other possessions, so forcibly entered upon and detained, or forcibly or unlawfully detained, by whom and when done, and the estate therein, it shall be the duty of the said justice to issue a precept under his hand and seal, directed to the sheriff[1] of the said county, commanding him

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8. The justice is not required to state all the evidence given, but only such as is objected to, and the proper proof to support the verdict will be presumed to have been made, unless the contrary appear. Payne *v.* Martin, 1 *Stewt. Rep.* 407. Lecatt *v.* Stewart, 2 *Stewt. Rep.* 474.

9. Complaint for unlawful detainer: verdict guilty: the magistrate entered judgment for a *forcible* and unlawful detainer. The word *forcible* held to be surplusage, and no error. Payne *v.* Martin, 1 *Stewt. Rep* 407. See also Grice *v.* Ferguson, 1 *Stewt. Rep.* 36.

[1] The act of Dec. 31, 1823, prohibits sheriffs and coroners from executing any process issued by a justice of the peace in civil cases, except attachments. The act of January 12, 1826, provides,—Sec 1. "That so much of the before-recited act as prohibits sheriffs from executing precepts, issued by justices of the peace, of *forcible entry and detainer,* be and the same is hereby repealed. Sec. 2. That it shall be the duty of sheriffs to execute all such precepts of

to cause to come before the said justice, twelve good and lawful men of the said county, qualified to serve as petit jurors, to inquire into and try such forcible entry and detainer, or forcible or unlawful detainer; which precept shall be in the form, or to the effect following, that is to say:

Form. County of , *ss.*

[a Con. Ala. Art. 5, *Sec.* 17.] [a]The State of Alabama, to the sheriff of the said county, greeting. *Whereas*, Complaint is made to the undersigned justice of the peace for the said county, of a certain forcible entry and detainer, (or of a certain unlawful detainer as the case may be) made by E. F. into the messuage, or upon the lands of C. D. in the county aforesaid. You are therefore hereby commanded to cause to come before the undersigned justice aforesaid, at the hour of , in the noon of the day of , twelve good and lawful men, of your county, to inquire of and try the said forcible entry and detainer, or forcible or unlawful detainer. Given under the hand and seal of the said justice, this day of , in the year of our Lord one thousand, &c.

Summons to the defendant. § 8. The said justice shall issue a summons to the party complained against, in the words or to the following effect:

County of , *ss.*

[b Con. Ala. Art 5, *Sec.* 17.] [b]The State of Alabama, to the sheriff of the said county, greeting. You are hereby commanded to summon E. F. of the said county, to appear before the undersigned justice of the peace in and for the county aforesaid, at the hour of in the noon of the day of , to answer to, and make defence against the complaint of C. D. of a forcible entry and detainer, *(or forcible detainer as the case may be)*, made by the said E. F. into the messuage, or upon the lands of the said C. D. in the county aforesaid; and have you then and there this precept, with a return of your proceedings therein. Given under the hand and seal of the said A. B. the day of , in the year of our Lord one thousand, &c. A. B. [L. S.]

Summons, how served. § 9. The said summons shall be served upon the party against whom the said complaint is made, or a copy thereof left at his usual place of abode, six entire days before the day of appearance therein mentioned; and such service of the said summons, in any part of this territory, as well out of the said county as in it, shall be good and effectual in law. And further, no jury shall, by virtue of this act, be sworn to inquire of and try any forcible entry and detainer, or forcible or unlawful detainer, where such previous notice shall not have been given as aforesaid.

Defendant may plead not guilty, or three years' possession. § 10. The party against whom such complaint is made, may at the time of appearance, mentioned in the said summons, and before the said jury is sworn, plead not guilty to the charge or complaint, or that he hath been three years in quiet possession, and his estate therein not ended or determined, agreeably to a subsequent clause in this act; and thereupon the parties shall be at issue; and the said justice shall proceed to swear the jury, so returned, to inquire of and try the same. And if the said party, against whom the complaint is made as aforesaid, does not appear at the time specified in the said summons, or appearing does not plead to the said complaint; then it shall be lawful for the said justice to proceed in the same manner, as if he had pleaded not guilty.

forcible entry and detainer, issued by justices of the peace, under the same rules and regulations that they were under, before the before-recited act was passed, all laws to the contrary notwithstanding."

Jurors' oath.

§ 11. To the said jurors, and each of them, who shall be returned to inquire of and try the said complaint, the justice shall administer the following oath or affirmation: "You do swear (or affirm,) that you will well and truly try this issue, joined between C. D. and E. F. and a true verdict give according to the evidence."

Complaint to be read to the jury.

§ 12. When the jury shall be sworn as aforesaid, the justice shall cause the said complaint to be read to them, and then call upon the complainant to support the same.

Proceedings on judgment for complainant.

§ 13. If the jury find the party against whom such complaint is exhibited, guilty, or find against his plea of possession, it shall be the duty of the said justice to record the said verdict, and to give judgment thereon, with costs: and also to issue a writ of restitution, directed to the sheriff, to cause the complainant to be re-seized, or re-possessed; to which shall be added a clause commanding the sheriff to levy the said costs, of the goods and chattels of the offender; and for want thereof, to take the body of such offender, and safely keep him in close custody, in the common jail of the county, until he shall pay the same, or be thence delivered by due course of law.

Judgment against complainant.

§ 14. If the jury find against the complainant, the said justice shall record the verdict, and give judgment accordingly, with costs: and shall issue execution, directed as aforesaid, for the said costs, against the goods and chattels; and in want thereof, against the body of the complainant.

Justice may postpone trial.

§ 15. The said justice may, at the request of either party, and on good reasons being assigned, postpone the trial to any time, not exceeding fifteen days; but such postponement shall be on the payment of costs.

Justice to make complete record of the proceedings.

§ 16. It shall be the duty of the said justice, to enter on his minutes or docket, true copies of the complaint, exhibited by virtue of this act, of the summons and *venire*, and their respective returns, and the names of the jurors, their verdict, and his judgment thereon; and also the names of the witnesses, and the admission of evidence objected to, and the rejection of evidence offered, the reason of such admission or rejection, and all the proceedings had before him, touching the said complaint.

Sheriff's refusal to execute process.

§ 17. If the sheriff of any county shall neglect or refuse to execute, or return any precept, writ, or other process, directed and delivered to him, by virtue of this act, he shall, for every such offence, forfeit and pay two hundred dollars to the party aggrieved; to be recovered with costs by action of debt, in any court of this territory, having cognizance thereof.

Proceedings may be removed by *certiorari*, after judgment.

§ 18. The proceedings had by virtue of this act, on such forcible entry and detainer, or forcible or unlawful detainer, may be removed before the circuit court of the county in which the same may have taken place; and such removal shall be by writ of *certiorari*, and in no other way, and then only after judgment.

Civil actions not barred.

§ 19. Neither the said judgment, nor anything in this act, shall bar or prevent the party injured, from bringing an action of trespass, or other actions, against the aggressor, or party offending.

Merits of title not to be inquired into.

Exceptions.

§ 20. The estate or merits of the title, shall in no wise be inquired into, on any complaint which shall be exhibited by virtue of this act: *Provided always*, That this act shall not extend to any person who hath had the uninterruped occupation, or been in quiet possession, of any lands or tenements, for the space of three whole years together, immediately preceding such complaint, so exhibited to the said justice, and whose estate therein is not ended or determined; but every such person may plead the same to the said complaint, which shall be tried in the manner hereinbefore prescribed.

Subpœnas may run to any county.

§ 21. Every justice of the peace, before whom any prosecution shall be instituted by virtue of this act, may issue a writ of *subpœna ad testificandum*, into any county of this territory.

Officers' fees.

§ 22. In prosecutions under this act, the following fees shall be allowed.

To the Sheriff.

To the sheriff.

For serving every summons and return,	$1 00
For summoning every jury, returning precepts, and attending the trial,	4 00
For executing every writ of restitution,	2 00
For serving every execution for costs, advertising property for sale, &c. the same fees as are, or shall be allowed, for like services in the county courts.	

To the Jurors and Witnesses.

To the jurors and witnesses.

The same fees as are or shall be allowed to them respectively, in civil cases in the county courts.

To the Attorney.

To the attorney.

For the trial of every cause,[1]	3 00

Penalty on delinquent jurors and witnesses.

§ 23. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or appearing, shall refuse to serve, or give evidence, in any prosecution instituted by virtue of this act, shall forfeit and pay, for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding eight dollars in the case of a juror, and not exceeding one hundred dollars in the case of a witness, as the said justice shall think proper to impose; and such justice is hereby authorized and required, to issue an execution, directed to any constable of the said county, to levy the same of the goods and chattels of the said offender; which fine, when recovered, shall be applied by the said justice to the use of the said county.

1819—(6) *Sec.* 39. Writ of restitution to be suspended for twenty days.

§ 24. When any judgment shall be entered up for the plaintiff by any justice, on the trial of any cause for a forcible entry and detainer, or forcible or unlawful detainer, no writ of restitution shall be issued by said justice within twenty days from the day of entering said judgment.

FRAUDS, AND FRAUDULENT CONVEYANCES.

1803—(7) Certain contracts required to be in writing.

§ 1. No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer any debt or damage out of his own estate; or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract for the sale of lands, tenements, or hereditaments, or the making any lease thereof, for a larger term than one year; or upon any agreement, which is not to be performed within the space of one year from the making thereof; unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person, by him thereunto lawfully authorized.

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[1] For the fees allowed the justices,—See "Fees."

Fraudulent conveyances, bonds, judgments, &c., void against the party liable to be affected thereby.

Conveyances of goods or chattels, without valuable consideration, fraudulent.

Possession, when evidence of title.

§ 2. Every gift, grant, or conveyance of lands, tenements, or hereditaments, goods or chattels, or of any rent-common, or profit, out of the same, by writing or otherwise; and every bond, suit, judgment or execution, had, or made, and contrived of malice, fraud, covin, collusion, or guile, to the intent or purpose to delay, hinder, or defraud creditors, of their just and lawful actions, suits, debts, accounts, damages, penalties, or forfeitures; or to defraud or to deceive those who shall purchase the same lands, tenements, or hereditaments; or any rent, profit, or commodity out of them; shall be from henceforth, deemed and taken only as against the person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them, whose debts, suits, demands, estates, interests, by such guileful and covinous devices and practices as is aforesaid, shall or might be, in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void; any pretence, color, feigned consideration, expressing of use, or any other matter, or thing, to the contrary notwithstanding. And moreover, if any conveyance be of goods or chattels, and be not on consideration deemed valuable in the law, it shall be taken to be fraudulent, within this act; unless the same be by will, duly proved and recorded; or by deed in writing, acknowledged and proved. If the same deed include lands, also in such manner as conveyances of lands are by law directed to be acknowledged or proved, or, if it be of goods and chattels only, then acknowledged or proved by one or more witnesses, in the superior court, or county court, wherein one of the parties lives, within twelve months after the execution thereof: or unless possession shall really, and *bona fide*, remain with the donee. And in like manner, where any loan of goods and chattels shall be pretended to have been made to any person, with whom, or those claiming under him, possession shall have remained by the space of three years, without demand made and pursued by due course of law, on the part of the pretended lender; or where any reservation or limitation shall be pretended to have been made, of a use or property, by way of condition, reversion, remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another as aforesaid; the same shall be taken as to the creditors and purchasers, of the persons aforesaid, so remaining in possession, to be fraudulent within this act: and that the absolute property is with the possession; unless such loan, reservation or limitation of use, or property, were declared by will or by deed, in writing, proved and recorded as aforesaid.

Not to extend to *bona fide* conveyances.

1823—(24) *Sec.* 1.

§ 3. This act shall not extend to any estate or interest in any lands, goods, or chattels, or any rents-common, or profit out of the same, which shall be upon good consideration, and *bona fide*, lawfully conveyed, or assured, to any person or persons, bodies politic, or corporate.

Mortgages, &c., required to be recorded in the county to which the property is removed.

§ 4. All property mortgaged, or under any deed of trust or other legal incumbrance which may afterwards be removed to any county in this state, shall be liable to the payment of any debts, which the holder of such mortgaged property may contract, after his settlement in such county, unless the mortgage, deed of trust, or incumbrance, covering such property removed as aforesaid, shall be duly recorded in the clerk's office of the county court of the county, to which such property may be removed, within six months, unless the person bringing such incumbered property into any county in this state, shall have removed from another state, in which case one year shall be allowed for the recording of any such mortgage, deed of trust, or other legal incumbrance, after such settlement as aforesaid: *Provided, however*, That after such record, duly made, the provisions herein shall cease to take effect: *Provided also*, That this act shall not be construed to affect any mortgage, deed of trust, or other legal incumbrance, existing at the time of the passage thereof.[1]

1828—(7) *Sec.* 1. Deeds of trust void against creditors and purchasers without notice, unless recorded.

§ 5. All deeds and conveyances of personal property in trust to secure any debt or debts, shall be recorded in the office of the clerk of the county court of the county wherein the person making such deed or conveyance shall reside, within thirty days, or else the same shall be void against creditors and subsequent purchasers, without notice; and if any such conveyance be made of real estate, the same shall be recorded in the office of the clerk of the county court of the county wherein the estate may be situate, within sixty days, or the same shall be void against creditors or subsequent purchasers, without notice.

Ib. Sec. 2. Plaintiff in execution may have the benefit of a deed of trust, on paying off the debt secured by it.

§ 6. In all cases wherein property shall be conveyed by a deed in trust to secure any debt or debts, it shall be lawful for any person or persons not a party thereto, holding an execution against the person or persons making such deed or other conveyance in trust, to pay the debt or debts secured by such deed, if he choose so to do, and on paying the same, the plaintiff or plaintiffs in said execution shall be placed in the same situation that the person or persons for whose benefit the trust was executed, occupied; and the said deed or other conveyance shall inure to the use and benefit of the plaintiff or plaintiffs in the execution, so far as to secure him or them the amount of the debt so paid, and the trustee shall be bound to execute the trust in the same manner as if the parties had not been changed, so as to secure the plaintiff or plaintiffs in the said execution the amount so paid to the person or persons for whose benefit the said deed or conveyance was first executed.

Ib. Sec. 3. Deeds of trust, how proved.

§ 7. Such deeds and conveyances of personal estate, shall be proved or acknowledged as deeds and conveyances of real estate.[2]

1828—(35) *Sec.* 1. Deeds, how affected by the time of registration.

§ 8. All deeds recorded within six months from the date of their execution, shall have force, and be valid and operative between the parties thereto, and subsequent purchasers and creditors; and all deeds recorded after the expiration of six months shall be valid and operative from the date of their registration as to creditors and subsequent purchasers: *Provided*, That the same shall be valid at all times between the contracting parties thereto.

Ib. Sec. 2. Patents for land may be recorded.

Copy of record evidence.

§ 9. It shall be lawful for any person or persons having patents for lands in this state, to have the same recorded in the office of the clerk of the county court of the county, where the lands may lie, and a certified copy thereof shall be admitted as evidence in any court in this state; and the record of all patents heretofore recorded are hereby legalized, and a certified copy thereof shall be admitted as evidence in any court in this state.

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[1] Suspended until the 1st of April, 1824.

[2] Suspended until the 1st of May, 1828.

Ib. Sec. 3. Six months further allowed for recording deeds. Proviso.

§ 10. It shall be lawful for any person or persons, who have failed to have deeds and conveyances of real or personal estate recorded within the time prescribed by law, to have the same recorded within six months after the passage of this act: *Provided*, That such registration shall not affect the rights of creditors and purchasers which have heretofore vested.

Ib. Sec. 4. Former registrations legalized.

§ 11. Deeds heretofore recorded, according to law, but not within the time required, shall be as good and effectual, as if recorded in the time required, except as to creditors or subsequent purchasers without notice.

1828—(44) Preamble.

Whereas, the legislature of this state, at the last session thereof, passed two acts,[1] the first on the 11th January, 1828, entitled "An Act more effectually to prevent frauds and fraudulent conveyances," and the other on the 15th January, 1828, entitled "An Act concerning the registration of deeds and patents," the last of which said acts, it hath been contended, repealed the former. To prevent any misconstruction of the true meaning of the aforesaid acts, and that each may have the effect intended, therefore,

Sec. 1. The two foregoing acts explained.

§ 12. *Be it enacted, &c.* That the aforesaid act, passed on the 11th January, to prevent frauds and fraudulent conveyances, and for other purposes, shall stand in full force, and the said act of the 15th January, 1828, concerning the registration of deeds and patents shall be held to apply to deeds, wherein the property has been absolutely conveyed, and not upon any trust or condition whatever.

GAMING.

1807—(12) Gaming contracts void.

§ 1. All promises, agreements, notes, bills, bonds, or other contracts, judgments, mortgages, or other securities, or other conveyances whatsoever, made, signed, given, granted, drawn, or entered, or executed by any person or persons whatever, after the passing of this act, where the whole or any part of the consideration of such promise, agreement, conveyance, or security, shall be for money, or other valuable thing whatsoever, laid or betted at cards, dice, or at any gaming-table, commonly called A B C, or E O, or billiards, or any other table, known or distinguished by any other letters, or by any figures, or rowley-powley table, or any rouge and noir, or at any faro bank, or at any other gaming-table or bank of the same or the like kind, under any other denomination whatsoever, or at any horse-race, cock-fighting, or at any other sport or pastime, or on any wager whatsoever, or for reimbursing or repaying any money knowingly lent or advanced at the time or place of such play, horse-racing, or cock-fighting, or other sport or pastime, to any person or persons so gaming, betting, or wagering, or shall at such time and place, so play, bet, or wager, shall be utterly void and of no effect, to all intents and purposes whatsoever.

1810—(4) Sec. 1. Lotteries prohibited under the penalty of 1000 dollars.

§ 2. No person or persons shall hereafter undertake to raise by lottery, any sum of money, or to dispose of by lottery, any property, either of his, her, or their own, or for any other person or persons whatever, unless he, she, or they, be authorized by law; and if any person or persons shall attempt to raise any sum of money, or to dis-

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[1] The two acts immediately preceding. Some sections of those acts would have fallen more properly under a different title, but for the obvious necessity of presenting the two acts entire, in juxtaposition with the explanatory act which follows.

Duty of judges and justices.

pose of any property by a lottery, except as herein authorised; each person concerned therein shall forfeit the sum of one thousand dollars, to be recovered by information or indictment, in any court having competent jurisdiction, for the use of the territory: and when any of the judges of the superior courts of law and equity, or any justice of the peace, on his own view of the offence, or by information on the oath of one or more creditable witness or witnesses, shall be satisfied that any person is concerned in any scheme of a lottery, contrary to the provisions of this act, he is authorized and required to issue his warrant against any such person or persons, and have him, her, or them brought before him, and shall compel any and every person concerned in any lottery contravening this act as aforesaid, to enter into a recognizance, himself in the sum of one thousand dollars, with two good and sufficient securities in the sum of five hundred dollars each, to appear at the next superior court of the proper county, to answer to such charges as may be exhibited against him, and to be of good behavior in the mean time; and in case any person taken up as aforesaid, shall fail to give the security required by this act, he shall be committed to jail.

1812—(12) *Sec.* 1. Penalty for exhibiting gaming-table, or being interested therein.

§ 3. If any person or persons shall be guilty of keeping or exhibiting any gaming-table, commonly called A B C, or E O, or roulette, or rowley-powley, or rouge and noir, or any faro bank, or any other gaming-table or bank of the same or like kind, or of any other description under any other denomination whatever, or shall be, in any manner, either directly or indirectly, interested or concerned in any of the aforesaid gambling-tables, bank, or games, either by furnishing money, or other articles for the purpose of carrying on the same; being interested in the loss or gain of the said table or bank, or employed in any manner in conducting, carrying on, or exhibiting said table or bank; every person so offending, and being convicted thereof in the superior court of law and equity of the proper county, shall pay a fine of not less than five hundred dollars, and not more than two thousand dollars, and shall stand in the pillory three days in succession, one hour each day.

Ib. Sec. 2. Owners or occupants of houses to prohibit gaming.

§ 4. If any owner or occupant of any house, out-house, or other building, shall knowingly permit or suffer any of the before-mentioned tables, banks, or games to be carried on or exhibited in their said house, out house, or other building, and be convicted thereof, he shall pay a fine of not less than one hundred dollars, nor more than two thousand dollars: *Provided always*, That if the owner or occupant of said house, out-house, or other building shall give information to any judge or justice of the peace, of the proper county, against any person keeping, exhibiting, concerned or interested in said table, bank, or game, within six days after the same comes to his knowledge, he or they so informing shall not be liable to the penalty of this section.

Ib. Sec. 4. Judges, &c., to arrest persons suspected of gaming.

§ 5. It shall be the duty of all judges, justices of the peace, justices of the quorum, and city magistrates, who shall receive information, or shall have good cause to believe that any person is guilty of any of the offences created by this act, to cause the said person or persons so suspected to be arrested, and brought before them; and if, on examination, the said judge, or justice, or magistrate shall be of opinion that such person is guilty of the charge laid against him, the said judge shall bind him in recognizance, with good and sufficient security, to appear at the next superior court of law and equity, to answer said charge, and also that he, in the mean time, will not be guilty of the like offence, with which he stands charged, and in default of his finding such security, to commit the offender to the jail of the proper county.

Ib. Sec. 5. Militia may be called out.

§ 6. Whenever any judge or justice may deem it necessary, they are hereby authorized to summon a militia officer, with as many militia-men as they may think competent to assist the officer in enforcing the provisions of this act, and every person refusing or failing to aid and assist therein, shall forfeit and pay the sum of twenty dollars, to be recovered before any justice of the peace, for the uses hereafter mentioned.

1810—(4) Sec. 4. Persons sued may plead the general issue.

§ 7. If any person should be sued for any part that he may have acted in aiding the due execution of this act, or any part thereof, he may plead the general issue, and give this act in evidence.[1]

1812—(12) Sec. 6. Billiard-tabled to be licensed.

§ 8. Hereafter, any person wishing to set up and use a billiard-table, for play, within this territory, may do the same by obtaining a license from the clerk of the county court, of the proper county, which license the clerk is hereby authorized and directed to grant, on the applicant's paying into his hands the sum of one hundred dollars, and one dollar, the clerk's fee, for granting such license: and every billiard-table, the owners and keepers thereof, so set up and licensed, as aforesaid, shall be exempted from all the pains and penalties imposed by any preceding section of this act, for the space of one year from the date of such license: and every clerk receiving any money for licensing any billiard-table as aforesaid, shall pay the same into their respective county treasury, within one month thereafter, under the penalty of two hundred dollars, to be recovered before any court having jurisdiction thereof, upon motion made by the county treasurer, in the same manner as is provided for the recovery of territorial taxes by the auditor of public accounts.[2]

Ib. Sec. 7. Fines, how appropriated.

§ 9. All fines and forfeitures under this act, in all the counties of this territory, shall be for the use of the county where the same were paid, or where the fine was imposed.

Ib. Sec. 8. Clerks of county courts to furnish list of billiard-tables licensed.

§ 10. It shall be the duty of the clerks of the county courts respectively, to furnish the judge of the superior court, on the first day of each term, a list of the persons having obtained license as aforesaid, within one year preceding said court, and the date of such license, which list, together with this act, shall by the judge be given to the grand jury, in charge, and the grand jury shall present every person who shall have used or set up a billiard-table, without having taken out a license as aforesaid, which person or persons so presented, shall be tried on said presentment by a petit jury, and fined in such sum as the jury may assess: *Provided*, The same does not exceed the fines imposed in the first section of this act.

1821—(35) Sec. 3. Persons exhibiting three-ticket lottery, or three-thimbles, how punished.

§ 11. If any person shall be guilty of exhibiting the three-ticket lottery, or shall be guilty of playing at the game called the three-ticket lottery, or the game called three-thimbles, every such person shall, on conviction of such offence, be sentenced to stand in the pillory on three several days, for the space of one hour each day, and shall forfeit and pay to the state, a sum not less than five hundred nor more than two thousand dollars, to be assessed by the jury who tries the cause: *Provided*, That the provisions of this act shall only embrace the holder or exhibiter of such game or lottery, and shall not extend to persons who may casually bet at such game, or lottery.

Ib. Sec. 4. Penalty for similar offences.

§ 12. If any person should exhibit any lottery or game similar to those specified in the third section of this act wherein a greater or less number of thimbles or cups than three are used, such person shall be liable to the same penalties and forfeitures, to be ascertained in the same way as is prescribed in the said third section.

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[1] This section, although taken from an act of 1810, relates to provisions differing in no material respect from those contained in § 6.

[2] See hereafter § 13. "Taxes,"—§ 7.

1826—(5) *Sec.* 1. Licenses for gaming-tables prohibited.

Penalty for keeping gaming-table.

§ 13. It shall not be lawful for any court, clerk, city corporate, town council, or any other authority whatever, within this state, to issue any license or permission to any person or persons, to keep, or cause to be kept, any table, bank, or other invention, by whatever name known or called, used for gaming; and if any person or persons shall, after the passage of this act, by him, her, or themselves, or by his, her, or their agent, keep, or cause to be kept, any such table, bank, or other invention, by whatever name known or distinguished, for the purpose of gaming, or shall permit, or knowingly suffer the same to be kept, for the purpose aforesaid, on his, her, or their premises, he, she, or they, so offending shall, on conviction thereof upon indictment, be fined in a sum not less than five hundred dollars, nor more than two thousand dollars, and imprisoned not less than two months, nor more than twelve months.

Ib. Sec. 2. Duty of judges and justices.

§ 14. It shall be the duty of the judges of the circuit courts, at each term of said courts, to give this act in charge to the grand jury; and it shall be the duty of all justices of the peace to issue their warrant against all who shall offend against this act, and to bind them over to the next term of the circuit court having cognizance of the offence.

Ib. Sec. 3. Betting at unlicensed tables.

§ 15. If any person shall be convicted of betting at any gaming-table not heretofore licensed, within the meaning of this act, such person shall be fined in a sum not more than five hundred dollars, nor less than twenty dollars, to be assessed by the jury trying such offender.

Ib. Sec. 4. Imprisonment for fine.

§ 16. Any person or persons, convicted of betting upon any gaming-table, and fined for the same, shall remain in custody until the fine be paid.

1828—(40) *Sec.* 1. Playing with cards or dice, in public places, prohibited.

§ 17. If any person shall play at any tavern, inn, store-house for retailing spirituous liquors, or any other public house, or in any street or highway, or in any other public place, or in any out-house where people resort, at any game or games, with cards or dice, such person or persons so playing shall, on conviction thereof by indictment, be fined a sum not less than twenty, nor exceeding fifty dollars.

Ib. Sec. 2. What necessary to be stated in the indictment, and proved.

§ 18. On the trial of any person or persons for the commission of the offence hereinabove named, it shall be sufficient for the indictment to charge, that the person or persons offending did play at cards, or dice, (as the case may be,) in some of the places above specified, without stating what description of game, or without stating that money or any other thing was bet upon the event of said game; and upon making proof of the charge herein required, it shall be considered that the offence is made out without proving what the game was or is called, or without proving that anything was bet upon the event of such game or games.

Ib. Sec. 3. State's attorney may send persons before the grand jury.

19. The several solicitors and attorney-general for this state, shall have power, and it shall be their duty to send a summons for any person or persons, and cause them to go before the grand jury, of the proper county, and give evidence of such playing, and such person or persons, so made a witness, shall be exempt from liability for any violation of this act, of which he is so compelled to give evidence.

Ib. Sec. 4. Gaming tables prohibited.

§ 20. If any person or persons shall hereafter be guilty of keeping or exhibiting any gaming-table called A B C, or E O, or roulette, or rowley-powley, or rouge and noir, or shall keep or exhibit any faro-bank, or shall keep or exhibit any other gaming-table or bank of the like kind, or of any other description, under any other name or denomination, or without any name therefor, or shall in any manner be interested or concerned in keeping, exhibiting, or carrying on any such table, bank, or game, each and every person so offending and being thereof convicted, shall be fined one thousand dollars, and on failure to pay the same, shall be imprisoned without bail, for three months.

§ 21. If any person or persons shall bet or be concerned in betting at any of the gaming-tables, bank or banks, in the last section of this act enumerated, such person or persons upon conviction by indictment, shall be fined in any sum not exceeding one hundred dollars, nor less than ten dollars.

Ib. Sec. 5. Penalty for betting at gaming-tables.

§ 22. In all prosecutions for offences under the fourth section of this act, it shall be sufficient for the indictment to charge that the person indicted did keep and exhibit the gaming-table or bank, above specified, for gaming, without proving that any money was won or lost, or bet upon such gaming-table or bank, and that the person charged was interested and concerned, in keeping, exhibiting, and carrying on said table, game, or bank, without setting forth the manner in which the defendant was so interested or concerned, or to charge that the defendant or defendants betting upon or concerned in betting upon such table, game, or bank, did bet upon such table, game, or bank, describing the table, game, or bank, by the proper name, if known, or by describing it as a table, game, or bank, the name of which is unknown; and the several solicitors in this state, and grand jurors shall have power under the direction of the court, to send for persons, and compel their attendance as witnesses, in the same manner, and under the same rules as are prescribed in the third section of this act, and each solicitor, (or the attorney general, as the case may be,) shall be entitled to receive double the fees heretofore allowed by law, for all convictions under this act.

Ib. Sec. 6. Indictments against keepers of gaming-tables.

Solicitor's fees.

GARNISHMENT.

§ 1. Whenever a judgment shall have been rendered by any court of record, or any justice of the peace, in this territory, and an execution against the defendant or defendants shall have been returned by the proper officer, "No property found;" on the affidavit of the plaintiff, or other credible person, that said defendant or defendants, hath or have no property within the knowledge of such affiant, in his or their possession, and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have effects of such defendant or defendants in his or their hands, it shall be lawful for said court, or justice of the peace, to cause the person or persons supposed to be indebted to, or supposed to have any of the effects of the said defendant or defendants, to be summoned forthwith to appear before said court or justice, as a garnishee or garnishees; and said court, or justice of the peace shall examine and proceed against such garnishee or garnishees, in the same manner as required by law against garnishees in original attachments.[1]

1818—(2) *Sec.* 3. Garnishee may be summoned on return of execution, "No property found,"

§ 2. On the rendition of a judgment, by any court of record, or justice of the peace, if the plaintiff, or other credible person make affidavit that the defendant or defendants hath or have no property within the knowledge of such affiant, in his or their possession, and that such affiant

1818—(14) *Sec.* 3. or on rendition of judgment, affidavit being made.

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[1] The justice may make the garnishment returnable at a day certain, not less than ten nor more than thirty days from its issuance.—See § 5.

hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have effects of such defendant or defendants, in his or her hands, it shall be lawful for such court or justice to cause the person or persons supposed to be indebted to, or supposed to have any of the effects of said defendant or defendants, to be summoned to appear forthwith before such court or justice, as a garnishee or garnishees, and said court or justice shall examine and proceed against such garnishee or garnishees, in the same manner required by law, against garnishees in original attachments.

1823—(11) *Sec.* 1. Oath may be made before the clerk, who shall summon the garnishee to appear at the next term. a *See* § 2.

§ 3. Whenever hereafter on the rendition of judgment, any plaintiff or other creditable person shall take the oath required by the third section of an act entitled "An act supplemental to the laws now governing judicial proceedings," passed November twenty-first, eighteen hundred and eighteen[a] before any clerk of the circuit or county court, the said clerk shall issue a summons to the person or persons alleged by said oath to be indebted to, or having effects of said defendant or defendants, in his or their hands, to appear at the next term of the court for which he may be clerk, as garnishee or garnishees; and said court shall examine and proceed against such garnishee or garnishees, in the manner required by law against garnishees in original attachment.

1832—(2) *Sec.* 1. Law extended to justices. b § 3.

§ 4. All the provisions of the before-recited act[b] shall be applicable to justices of the peace, as well as clerks of the circuit and county courts.

Ib. Sec. 2. Summons by justice, to garnishee, for sum under his jurisdiction, returnable to justice.

§ 5. When it shall be necessary for justices of the peace to issue a summons, to garnishee or garnishees, for any sum or sums under the jurisdiction of a justice of the peace, it shall be lawful for such justice issuing such summons, to make it returnable before him or some other justice of the peace, at some certain place and day, not less than ten nor more than thirty days from the issuance of the same.

Ib. Sec. 3. Garnishee liable to costs, only after summons and default.

§ 6. No garnishee or garnishees whatever, shall be liable, or be condemned and adjudged to pay any costs but after summons and default by such garnishee or garnishees.

[Garnishees in attachment—See "Attachment."]

GENERAL ASSEMBLY.

Con. Ala. Art. 3. *Sec.* 1. Two branches. Style of laws.

§ 1. The legislative power of this state shall be vested in two distinct branches: the one to be styled the senate, and the other the house of representatives, and both together "The General Assembly of the State of Alabama," and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

Sec. 2. Representatives, how chosen, and term of service.

§ 2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer.

Sec. 3. Elections, when held.

§ 3. The representatives shall be chosen every year, on the first Monday and the day following in August, until otherwise directed by law.[1]

Sec. 4. Qualification of representatives.

§ 4. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof, a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

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[1] The first Monday in August only. See "Elections,"—§ 23.

Sec. 12. Senators, their election, qualifications, and term of service.

§ 5. Senators shall be chosen by the qualified electors, for the term of three years, at the same time, in the same manner, and at the same places, where they may vote for members of the house of representatives; and no person shall be a senator, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

Sec. 13. Classification of senators.

§ 6. The senators chosen according to the apportionment, under the census ordered to be taken in one thousand eight hundred and twenty-six, when convened, shall be divided by lot into three classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year, so that one-third may be annually chosen thereafter, and a rotation thereby kept up perpetually. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of members in each class.

Sec. 14. Each house to elect its officers, and to judge of the qualifications, &c., of its own members.

§ 7. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall, annually, choose a president and its other officers; each house shall judge of the qualifications, elections, and returns of its own members: but a contested election shall be determined in such manner as shall be directed by law.

Sec. 15. Quorum. Absent members.

§ 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Sec. 16. Powers of eace house.

§ 9. Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Sec. 17. Punishment for contempt.

§ 10. Each house, during the session, may punish, by imprisonment, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings; *Provided*, That such imprisonment shall not, at any one time, exceed forty-eight hours.

Sec. 18. Journal of proceedings. Yeas and nays. Protest.

§ 11. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals. And any member of either house shall have liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

Sec. 19. Members privileged from arrest.

§ 12. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to, and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer for any thing spoken in debate in either house, in any court or place elsewhere.

Sec. 20. Vacancies, how filled.

§ 13. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election, to fill such vacancies.

Sec. 21. Doors kept open, except when.

§ 14. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

Sec. 22. Adjournments.

§ 15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Sec. 23. Bills, how to originate.

§ 16. Bills may originate in either house, and be amended, altered, or rejected by the other; but no bill shall have the force of a law, until on three several days, it be read in each house, and free discussion be allowed thereon, unless, in cases of urgency, four-fifths of the house in which the bill shall be depending, may deem it expedient to dispense with this rule: and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses; *Provided,* That all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

Revenue bills.

Sec. 24. Compensation of members.

§ 17. Each member of the general assembly shall receive from the public treasury, such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

Sec. 25. Members not eligible to certain offices.

§ 18. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people.

Sec. 26. What offices disqualify persons from being members.

§ 19. No person holding any lucrative office under the United States, (the office of post-master excepted,) in this state, or any other power, shall be eligible to the general assembly; *Provided,* That offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or that of the quorum or county court, while it has no salary, shall not be deemed lucrative.

Sec. 27. Public defaulters disqualified.

§ 20. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

Ib. Sec. 29. Where held until 1825.

§ 21. The first session of the general assembly shall commence on the fourth Monday in October next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the general assembly, to be held in the year one thousand eight hundred and twenty five;—during that session the general assembly shall have power to designate by law (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed:—

1826—(1) *Sec* 1. Sessions to be held at Tuscaloosa.

§ 22. The town of Tuscaloosa is hereby designated as the permanent seat of government; and from and after the end of the present session of the general assembly, the sessions of the said general assembly shall be held in the said town of Tuscaloosa.

1821—(21) *Sec.* 1. Time of convening.

§ 23. The general assembly of this state shall convene on the third Monday in November, in each and every year.

1821—(1) *Sec.* 1. Elections by the general assembly.

§ 24. In all elections by the general assembly, the votes shall be given for one election only, at the same time: a majority of the whole number of votes shall be necessary to a choice:—the members of both houses will assemble in the representative chamber, and the names of the members of each house shall be called by their respective clerks: whereupon the president of the senate and speaker of the house of representatives shall ascertain the result, which shall be announced by the speaker of the house of representatives.

§ 25. It shall not be lawful for any member of the general assembly of the state, to be elected to any office of honor, trust or profit, during the time for which he is elected, which office is filled by a joint vote of the two houses of the general assembly.

1833—(30) *Sec.* 1. Members of general assembly not eligible to certain offices.

§ 26. The president of the senate, and speaker of the house of representatives, shall be entitled to receive six dollars per day; and each other member shall receive four dollars for every day's attendance at the general assembly, and shall be allowed four dollars for every twenty miles travelling to and from the general assembly, and in that proportion for a shorter distance; and if any member shall be detained by sickness after leaving home, in coming to, or be unable to attend the house after he arrives at the place where the general assembly shall sit, he shall be entitled to the same daily allowance of an attending member.

1821—(8) *Sec.* 1. Compensation of members.

§ 27. The clerk of the house of representatives, and the secretary of the senate each, shall be allowed seven dollars per day; the assistant clerks of each branch of the legislature, five dollars per day; the door-keepers, one to each house, four dollars per day.

Ib. Sec. 2. Of clerks and door-keepers.

§ 28. The compensation which shall be due to the members and officers of the general assembly, shall be certified by their president and speaker, respectively, to the auditor of public accounts, who shall issue his warrant therefor, on the territorial treasurer, which shall be paid out of the territorial treasury.

1812—(22) *Sec.* 4. Compensation due, to be certified by the presiding officer.

§ 29. It shall be the duty of the secretary of state, at, or soon after the close of each general assembly, to deposit in his office all the records and papers necessarily belonging to the legislature; which shall be determined by an examination, made by the secretary of state, secretary of the senate, and clerk of the house of representatives, who are hereby appointed commissioners for that purpose.

1820—(10) *Sec.* 1. Secretary of state to preserve the records of general assembly.

§ 30. The chairman of the enrolling committees shall be required to preserve the engrossed copies of all laws and joint resolutions which may be passed by the legislature, and file them with the secretary of state.

1823—(16) *Sec.* 1. Engrossed copies of laws.

§ 31. Within ten days after the adjournment of each session of the legislature, it shall be the duty of the clerk of the house of representatives, to assort all the papers and documents relating to the unfinished business of the session, and arrange them into convenient files, in the following manner, viz:—1st. All petitions with the accompanying documents, to be arranged, put up, and filed, in alphabetical order, and tied up in convenient bundles, with a label on each bundle, showing the number contained in it. 2dly. All bills rejected on the first reading, to be numbered, filed, and labelled in like manner, and so of bills rejected on the second and third reading, the label in every instance showing the number of bills contained in each bundle, and the reading at which it was rejected. 3dly. All communications from the governor, the bank, the comptroller and treasurer, which shall have been received during the session and not entered at length on the journal, shall be filed and labelled, in separate bundles, for each department, if sufficiently numerous to require it. 4thly. Reports from standing and select committees, shall be arranged, filed, and labelled in like manner, the label in all instances showing the session to which the papers appertain, by marking the date; and should there be other papers not comprehended under either of the foregoing heads, they shall be arranged and filed as miscellaneous papers, and labelled according to their nature, for the convenience of future reference; and the papers so arranged, filed, and labelled, shall be delivered to the secretary of state for safe keeping.

1827—(25) *Sec.* 1. Clerk of H. R. to arrange and file with the secretary of state, all papers relating to unfinished business, &c.

Ib. Sec. 2. Secretary of senate to do the same.

§ 32. It shall be the duty of the secretary of the senate, within the same time, to arrange, file, and label the papers in his office at the close of each session, according to the directions contained in the first section of this act, in relation to the papers of the house of representatives, and in like manner, to deliver them to the secretary of state.

Ib. Sec. 3. Secretary of state's duties in relation to the papers so filed.

§ 33. It shall be the duty of the secretary of state, to receive the papers so filed and labelled from the said clerk and secretary, and keep and preserve them in his office, keeping the papers of each house separate from those of the other, and allow them to be inspected, and to furnish copies when required, on receiving the fees allowed for similar services; and it shall be his duty to certify that the said clerk and secretary, have respectively complied with the requisitions of this act, which certificate shall be necessary to entitle them to the compensation allowed for the services herein required; and if either the said clerk or secretary shall fail to arrange the papers of his office, according to the directions of this act, it shall be the duty of the secretary of state, to withhold the said certificate, until they shall be so arranged and filed.

1831—(11) *Sec.* 1. Secretary of state to procure stationary, for general assembly, &c.

§ 34. The secretary of state is hereby authorized and required to purchase, annually, in Philadelphia, Baltimore, or New York, by order, the necessary books and stationary for the several departments of state, and for the general assembly, and the comptroller shall issue his warrant, for the sum or sums necessary for the purposes aforesaid.

Note.—For the oaths to be taken by members of the general assembly, and the manner of administering them.—See "Oaths Official."

GOVERNOR.

Con. Ala. —Art. 4. Executive powers.

§ 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the Governor of the State of Alabama.

Governor, how elected.

§ 2. The governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives.

Returns, how made. Votes, how counted Plurality to elect. Tie. Contested elections.

§ 3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

Term of service. Qualifications.

§ 4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the United States, and shall have resided in this state at least four years next preceding the day of his election.

Compensation.

§ 5. He shall at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

§ 6. He shall be commander in chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the general assembly shall fix his rank.

Commander of militia, &c.

§ 7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

May require information of executive officers.

§ 8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the general assembly.

Convening and adjourning general assembly.

§ 9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

Give information to general assembly.

§ 10. He shall take care that the laws be faithfully executed.

Execution of laws.

§ 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

His powers in criminal cases.

§ 12. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy, or until the governor absent or impeached shall return or be acquitted.

Sec. 18. Proceedings on impeachment, &c., of governor.

§ 13. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall in like manner administer the government.

Sec. 19. Who to administer the government.

§ 14. The governor shall always reside, during the session of the general assembly, at the place where their session may be held, and at all other times, wherever, in their opinion, public good may require.

Sec. 21. Governor, where to reside.

§ 15. No person shall hold the office of governor, and any other office or commission, civil or military, either in this state, or under any state, or the United States, or any other power, at one and the same time.

Sec. 22. Governor not to hold any office.

§ 16. The governor of this state shall, as soon after the passage of this act, as practicable, reside at or in the vicinity of the seat of government.

1833—(33) *Sec.* 1. Governor to reside at the seat of government.

NOTE.—Governor's salary, $2500.—See "Salaries."

GUARDIANS.

NOTE.—Some portion of the law respecting Guardians, has been unavoidably inserted under the head of "Executors and Administrators."

1806—(1) *Sec.* 44. Appointment of guardians.

§ 1. THE chief justice of the orphans' court, in each county, when and so often as there shall be occasion, is hereby empowered, to allow of guardians that shall be chosen by minors of fourteen years of age, and it shall be lawful for the said court to appoint guardians for such as shall be within, or under that age. When any minor, above fourteen years of age, shall be cited by the said chief justice to choose a guardian, and such minor shall refuse or neglect to appear, or when appearing, shall refuse to choose a guardian, or any guardian chosen by such minor shall be unable to give sufficient security, or shall refuse the trust; in every such case the orphans' court shall have the same power to appoint a guardian, as though such minor was under the age of fourteen years: *Provided nevertheless*, That when a minor above the age of fourteen years shall choose a guardian, such minor may have that choice certified to the said chief justice, by a justice of the peace in the same county; which choice so certified, shall be deemed as good and valid, as if done in presence of the said chief justice.

Ib. Sec. 45. Guardians to give bond.

§ 2. Every orphans' court appointing a guardian to a minor of his or her own election, shall take bond of such guardian, with good securities, in a sufficient sum, for the faithful execution of his office and trust.[1] (1)

Ib. Sec. 46. Guardians to return inventory of estate, and report accounts.

§ 3. Every guardian in socage, or other guardian, shall, within three months after his appointment and acceptance of such office, deliver into the office of the register of the orphans' court an inventory, on oath, of all the estate, real and personal, which he shall have received, or taken possession of, to be entered of record; and shall exhibit once in every year, and oftener if thereunto lawfully required, an account of the product of the said estate, and of the sale and disposition of such product, and disbursements: which accounts being examined and audited by the chief justice, in the same manner as executors' or administrators' accounts, and reported, fairly stated and supported by vouchers, and approved of by the court, shall be recorded in the register's office.[2]

Ib. Sec. 47. Guardians defaulting, may be displaced.

§ 4. Any guardian who shall not deliver in such inventory, or render such account, shall, by order of the orphans' court, to which he is answerable, be summoned, and if he remain in default, compelled to perform his duty, or be displaced. And the said court may, for any good and sufficient cause, displace a guardian, giving such guardian fourteen days' previous notice, by citation, to appear and show cause why he should not be displaced.

Ib. Sec. 48. Court may require additional security of guardians.

§ 5. The orphans' court, when they at any time shall know or have cause to suspect, that the securities of a guardian or any of them, are in failing or dubious circumstances, may require and compel such guardian to give additional security or securities; and if he refuses or neglects so to do, may displace him.

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[1] All guardians are required to give bond. See "Executors and Administrators,"—§ 3. "Judiciary—County Court,"—§ 23, 24.

(1) Several points of pleading settled with regard to actions on guardians' bonds. Davis *v.* Dickson et al., 2 *Stewt. Rep.* 370.

[2] Guardians refusing to settle, when cited, may be attached. See "Executors and Administrators,"—§ 28.

Ib. Sec. 49. Proceedings when ward's estate is insufficient for his maintenance.

§ 6. If the personal estate, and rents and profits of the real estate, be not sufficient for the maintenance and education of the ward, the orphans' court, on full investigation thereof, may, from time to time, order the guardian to sell such parts of the ward's lands, tenements, and hereditaments, as they shall direct and judge adequate to his or her maintenance and education.

Ib. Sec. 50. Proceedings on the sale of lands by guardians.

§ 7. The lands, tenements, and hereditaments, so ordered to be sold, shall be advertised by the guardian in three of the most public places in the county, and in some public newspaper in this territory, for the space of forty days previous to the time appointed for the sale thereof; and the guardian, at the time and place so advertised, shall sell the same at public vendue, upon a credit of twelve months after the day of sale, to the highest bidder, who shall give bond with satisfactory security for the amount thereof; and shall make report in writing of his proceedings thereon, to the next orphans' court after such sale: *Provided*, That the said guardian may adjourn the said sales from time to time, at his discretion. And said guardian shall make a deed to the purchaser for the lands, tenements, and hereditaments so sold; which deed shall vest in the said purchaser, as good and perfect an estate in the premises therein mentioned, as the ward was seized of or entitled to, at the time of making the said order.

Guardian's deed valid.

Ib. Sec. 52. Guardian's duty to idiots, &c.

§ 8. It shall be the duty of the guardians of idiots, lunatics, and persons *non compos mentis*;[1] to improve frugally, and without waste or destruction, their estates, and apply the income and profits thereof to the comfortable maintenance and support of such idiot, lunatic, or person *non compos mentis*, and of his household or family; (if any there be;) and the said guardian or guardians are hereby empowered to collect, sue for, and recover all just debts due to such idiot, lunatic, or person *non compos mentis*; and they shall also be subject to the payment of all just debts owing by such person, which were contracted when he or she was of sound mind, and before his or her distraction or lunacy, out of the personal estate; or if that be insufficient, then out of the real estate, in such way and manner as executors and administrators may by law discharge the debts of deceased persons, when the personal estate of such deceased is insufficient. And the said guardian and guardians shall have the same power and authority, by order of the orphans' court, to sell the lands, tenements, and hereditaments of any idiot, lunatic, or person *non compos mentis*, for the purpose aforesaid, as by this act is given to executors and administrators in similar cases, observing the same rules and restrictions. And the deed or deeds of conveyance of such guardian or guardians, shall have the same force, effect, and validity, to all intents and purposes.[2]

In certain cases may sell real estate.

Ib. Sec. 53. Idiots, &c., becoming sane, to resume their estates.

§ 9. If any such idiot, lunatic, or person *non compos mentis*, shall be restored to the use of his or her reason, and sanity of mind, (and on application, the same be made to appear to the orphans' court, who shall judge thereof,) the residue of his or her estate, both real and personal, shall be returned and delivered to him or her, the guardian or guardians, having such reasonable allowance for his or their charge and trouble, as the court shall order.

1822—(19) *Sec.* 1. Fathers may devise the custody and tuition of their infant children.

§ 10. Any father, even if he be not twenty-one years of age, may, by last will and testament, executed in the presence of two credible witnesses, devise the custody and tuition of his child, (which had never been married,) although it be not born, during any part of the infancy of such child, to whomsoever he will; and such devise shall give the devisee the same power over the person of the child as a guardian in common socage hath, and authorize him by actions of ravishment of ward, or trespass, to recover the child, with damages for the wrongful taking or detaining of him or her, for his or her use; and for the same use to undertake the care and management, and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such actions and suits concerning the same, as a guardian in common socage may do.

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[1] For the mode and occasion of appointing such guardians, see "Judiciary—County Court,"—§ 24, 25, and note.

[2] A considerable portion of the law here referred to has been repealed: but equivalent provisions will be found under the titles "Estates of Deceased Persons," and "Executors and Administrators."

Ib. Sec. 2. Guardian must declare acceptance in open court, give bond, and deliver inventory.

§ 11. Any guardian so appointed by the last will and testament of any person, shall appear openly in the county court, in which last wills and testaments are required by the existing law to be proved and recorded, before the exercise of any authority over the minor or his estate, and declare his acceptance of the guardianship, which shall be recorded; and shall give such bond and security, and in like manner, as is now required by law from guardians appointed by the county courts; and shall deliver an inventory on oath, of all the estate real and personal, which he shall have received or taken possession of, within the same time after his acceptance of such office, and to the office of the same court to which other guardians are required by law to deliver inventories of the estates of their wards: *Provided,* That no child, the custody and tuition of which shall be devised as aforesaid, shall be taken from the mother of such child, before it attains the age of fifteen years; unless in the opinion of the court to which such guardian may be accountable, it would be improper for the mother to retain the possession of any such child.

Proviso.

Ib. Sec. 3. To account as other guardians, &c.

§ 12. The said guardians appointed as aforesaid, shall account as often, and under the same regulations, as other guardians are by law directed to account, and shall, for failure to deliver an inventory as aforesaid, or to account agreeably to law, be liable to be proceeded against, and to removal from office as other guardians.

Ib. Sec. 4. Guardians may be compelled to declare acceptance, or renunciation of guardianship.

§ 13. If any guardian shall fail or neglect to appear in the county court where such last will and testament shall be proved and recorded, within the space of six months thereafter, he may be summoned and compelled to declare his acceptance or renunciation of such trust; and if every such guardian appointed by any such last will and testament, shall renounce the same, which renunciation shall be recorded, the said court may and shall proceed to appoint and qualify some other person or persons to the guardianship, as if no such appointment of a guardian or guardians had ever been made.

INCORPORATED TOWNS.

1815—(9) Warrants for breach of by-laws, returnable forthwith.

§ 1. Any precept or warrant, issued for any fine or penalty incurred by the breach of any of the by-laws of any incorporated city or town in this territory, may be made returnable forthwith.

INDIANS, AND INDIAN TERRITORY.

1820—(16) Cotaco and St. Clair extended.

§ 1. The circuit court of Cotaco shall have jurisdiction, and the county shall embrace all that tract of country lying west of Willstown valley, and belonging to the Cherokee nation of Indians. And the the county of St. Clair shall embrace all the tract of country belonging to the Cherokee nation of Indians in Willstown valley, and east of the same.

§ 2. The expenses of prosecuting and supporting criminals who are prosecuted for offences committed on Indian lands, shall be paid out of the contingent fund, upon a certificate of the judge, made out as in cases now provided for by law.

Expenses of prosecuting paid by the state.

§ 3. The limits of the county of Autauga are hereby extended, so as to embrace all that country in the Creek nation lying west of the Chatahoochie river, south of the dividing line between the Creek and Cherokee nations, east of the Coosa river, and north of a line beginning at the first big falls of the Coosa river, and running in a direct line to Oakfuskee, Old Town on the Talapoosa river, from thence in a direct line to the falls of Chatahoochie river.

1827—(10) *Sec.* 1. Autauga extended.

§ 4. The civil and criminal jurisdiction of this state, is hereby extended over so much of the Creek territory, as is described in the foregoing section; and the circuit court of Autauga is authorized and required to enforce the same in as full and ample a manner, in the above described country, as in any other part of the county of Autauga: *Provided*, That nothing in this act shall be so construed, as to give any Creek or other Indian, any political or civil rights, other than those of protection under the laws of this state; and that the performance of no public duties, and the payment of no taxes, be required of the same.

Ib. Sec 2. Civil and criminal jurisdiction of the state extended.

§ 5. The civil and criminal jurisdiction of the circuit court of St. Clair and Shelby counties, is hereby extended so as to be concurrent in the Creek nation, with the jurisdiction given to the circuit court of Autauga county, by an act entitled "An act to extend the civil and criminal jurisdiction of this state over so much of the Creek nation, as was ceded under the treaty of the Indian Springs, of 1825, within the chartered limits of the State of Alabama," approved January 11th, 1827;[a] and powers equal to those given by said act, to the circuit court of Autauga county, are hereby in all respects extended to the circuit court of St. Clair and Shelby counties.

1828—(2) *Sec.* 1. Circuit court of St. Clair and Shelby to have concurrent jurisdiction with that of Autauga.

[a] *See* § 3 & 4.

§ 6. All the territory within the following boundaries, to wit: beginning on the bank of Coosa river at the mouth of Kiamulga creek, and running thence with McIntosh's road to the Georgia line; thence with the said line northwardly to the boundary line between the Creek and Cherokee nations; thence westwardly with the said last named boundary to the mouth of Will's creek on Coosa; thence down Coosa to the beginning, shall be added to and form a part of the county of St. Clair. And all the territory in the following boundaries, to wit: beginning at the mouth of Kiamulga, and running thence down the Coosa river to Fort Williams; thence in a direct line to Miller's Bend on the Chatahoochie; thence with the boundary line between Alabama and Georgia, to where it crosses McIntosh's road; thence with said road to the beginning, shall be added to, and form a part of the county of Shelby. And all the territory within the following boundaries, to wit: beginning at Fort Williams and running down Coosa river to Wetumpka falls; thence along the Indian boundary line to the road leading from Pensacola to Kendall Lewis' old stand on the Federal road; thence along said road to the Chatahoochie river, and all territory north of the aforesaid line, and not attached to any other county, shall belong to, and form a part of the county of Montgomery: and all Indian territory lying south of the before described line, shall belong to and form a part of the county of Pike.

1829—(15) *Sec.* 1. St. Clair extended.

Shelby extended.

Montgomery extended.

Pike extended.

Ib. Sec. 2. Jurisdiction of circuit courts extended;

§ 7. The jurisdiction of the circuit courts of the above-named counties is hereby extended over their respective limits, as established in the preceding section.

Ib. Sec. 3. of orphans' court, and court of revenue extended after 1st March, 1830.

§ 8. The jurisdiction of the orphan's courts and courts of revenue of the above named counties shall, after the first day of March, one thousand eight hundred and thirty, be extended over so much of their respective limits as now constitutes a part of the Creek nation.

Ib. Sec. 4. Court of revenue and roads to cause census of Indians to be taken.

§ 9. It shall be the duty of the court of roads and revenue in the above counties, on the first Monday in July next, or shortly thereafter, to appoint a suitable person, whose duty it shall be to make an accurate census of the Indian population residing in his county, classing them into separate classes, to wit: those under ten years; over ten and under twenty-one; over twenty-one and under forty-five; and those over forty-five; the males and females into separate columns, noting the number of mixed blood, and also the number of slaves owned by the Indian population, and make return thereof to the clerk of the county court of the county respectively, and to the secretary of state as soon as practicable.

Ib. Sec. 5. Taker of census to receive 3 dollars per day.

§ 10. The person so appointed shall be entitled to three dollars a day for the length of time that the court of revenue shall certify is necessary to perform said service, and the same shall be a charge upon the state treasury, subject to be reimbursed by such new counties as may hereafter be established out of the Creek Indian territory.

Ib. Sec. 6. No tax or militia duty imposed.

§ 11. Nothing in this act shall be so construed as to impose taxation or militia duty on the Indians, until the same be specially authorized by the state legislature.

Ib. Sec. 7. Sheriff's compensation for serving process.

§ 12. The sheriffs of said counties, for the service of any process in the Creek nation, shall be entitled to such compensation as the presiding judge of the circuit court, to which such process is returnable, shall certify, at the trial, is just and proper, and the same shall be taxed in the bill of cost.

1832—(7) *Sec.* 1. State's jurisdiction over all territory.

§ 13. The civil and criminal jurisdiction of the state of Alabama is hereby extended over all the Indian territory within the state of Alabama.

Ib. Sec. 2. Roads, &c., may be established in Indian territory.

§ 14. The commissioners' courts of revenue and roads, of any county in this state where Indians inhabit any portion of the territory, are hereby authorized to cause all such roads, bridges, and ferries, to be established within the territory upon which the Indians may live, as they may think the public good requires.

Ib. Sec. 3. Indians exempt from certain duties.

§ 15. This act shall not be so construed as to compel Indians to muster, or perform any other military duty, to work on roads, or serve on juries; neither shall anything in this act be so construed as to authorize the assessment or collection of any tax whatever, from any Indian, or person of mixed blood descended of Indians, residing within the limits of the territory claimed by any of the Indian tribes, within the chartered limits of this state.

Ib. Sec. 4. Indians may perpetuate testimony, record wills, &c.

§ 16. All Indians, or persons of mixed blood descended of Indians, within the limits of the state of Alabama, may, within the county of their residence, have all the privileges of perpetuating testimony, recording wills, and bills of sale and conveyances, with the testimony of such persons beforementioned, as white persons have in their respective counties with white testimony.

Ib. Sec. 5. White settlers on Indian lands, governed by the laws of the state.

§ 17. All white persons living within any portion of the country claimed by Indians, and attached to any county in the state, shall be in all respects governed by the same laws now in force for the government of the whites.

§ 18. All laws, usages, and customs, now used, enjoyed, or practised, by the Creek and Cherokee nations of Indians, within the limits of this state, contrary to the constitution and laws of this state, are hereby abolished.

Ib. Sec. 6. Indian laws, &c., abolished.

§ 19. If any Indian or Indians shall meet in any council, assembly, or convention, and there make any law for said tribe, contrary to the laws and constitution of this state, such Indian or Indians shall, upon conviction, be imprisoned in the common jail of the proper county, not less than two, nor more than four months.

Ib. Sec. 7. Penalty for enacting laws.

§ 20. It shall, at all times, be lawful for the chiefs and head-men, or any portion of any of the Indian tribes within this state, to meet any agent or commissioner of the United States, or this state, for any purpose whatever; and any person attempting, by persuasion or by force, to prevent such meeting on the part of the Indians, shall, upon conviction thereof before the circuit court of the county where the offence may be committed, be imprisoned three months.

Ib. Sec. 8. May meet U. S. commissioner.

Penalty for preventing such meeting.

§ 21. In all cases where suit is brought on contracts hereafter made, to recover money or property from any Indian, the consideration shall be proved by two creditable witnesses.

Ib. Sec. 9. Proof in suits.

§ 22. If any person or persons shall confiscate, or attempt to confiscate, the property of any person or persons, in consequence of his or her enrolling for emigration, or offering to enrol, such person or persons shall, upon conviction, be imprisoned in the common jail of the proper county, not less than two, nor more than four months.

Ib. Sec. 10. Penalty for endeavoring to prevent emigration.

§ 23. It shall be the duty of the governor of this state, to cause to be printed and distributed two hundred copies of this act, to each of the Indian tribes within the chartered limits of this state.

Ib. Sec. 11. This act to be distributed,

§ 24. It shall be the duty of the judges of the circuit courts to give this act in charge to the grand juries of those counties to which any portion of the Indian territory is attached.

Ib. Sec. 12. and given in charge to the grand juries.

§ 25. Contracts freely and voluntarily made, whereby any white man shall purchase an improvement or claim of any Indian, on any of the unceded territory in this state, and shall actually receive possession thereof, shall be obligatory on the parties to such contract: *Provided*, The same is made in the presence of one respectable free white person, and reduced to writing, in which shall be specified the terms of such contract; *And provided*, A valuable consideration be paid for such claim.

Ib. Sec. 14. Contracts for Indian possessions, valid. Their requisites.

INSOLVENT DEBTORS.

§ 1. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

Con. Ala. Art. 1. *Sec.* 18. Debtors, when discharged.

§ 2. For the relief of insolvent debtors, who shall be taken in execution, and to prevent the long imprisonment of unfortunate people, which can be of no benefit, but rather a disadvantage to their creditors: *Be it enacted*, That if any person shall be taken or charged in execution in any suit, commenced or prosecuted in any court of record within this territory, it shall be lawful for any judge or justice of the said court, or of the court of that county or corporation, to whose jail such person shall be committed, by warrant under his hand and seal, to command the jailer or keeper of the said prisoner, to bring before the said court, if sitting, or if not sitting, in case it be a superior court,

1807—(21) *Sec.* 23. How insolvent debtors may be discharged from confinement.

before any one judge of the said court, at a certain time and place therein to be appointed, and if an inferior court, before any two justices of said court, at their county court-house, likewise on a certain day to be appointed in such warrant, the body or bodies of such person or persons so in prison as aforesaid, together with a list of the several executions, with which he or she shall stand charged in the said jail, which warrant such jailer is hereby required to obey; and ten days notice[1] thereof shall be given to the party or parties, or their executors, administrators, or agents, at whose suits such prisoner or prisoners shall be in execution; and every such prisoner coming before the said court, judge, or justices, as the case shall be, shall subscribe and deliver in a schedule of his whole estate, and make oath and swear to the effect following, that is to say: "I, A. B. do, in the presence of Almighty God, solemnly swear (or affirm, as the case may be,) that the schedule now delivered, and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true, and perfect account and discovery of all the estate, goods, and effects, to me in any ways belonging, and such debts as are to me owing, or to any person in trust for me, and of all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me, or to my use, or to any other person or persons in trust for me; and that I, or any other person or persons, in trust for me, have not land, money, stock, or any other estate, real or personal, in possession, reversion, or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not directly or indirectly sold, lessened, or otherwise disposed of, in trust, or concealed all or any part of my lands, money, goods, stock, debts, securities, contracts, or estate, whereby to secure the same, or to receive or expect any profit or advantage therefrom, or to defraud or deceive any creditor or creditors to whom I am indebted, in any wise howsoever: So help me God." Which schedule being so subscribed in open court, if taken in court, and if not, in the presence of one judge or two justices, shall be returned to the clerk of the court, there to remain for the better information of the creditor; and after delivering in such schedule, and taking such oath, and delivering up all evidences of debt in his possession, and orders for such as are not in his possession,[a] such prisoner shall be discharged by warrant from such court, or from one judge, or two justices, (as the case may be,) which warrant shall be sufficient to indemnify such sheriff or officer, against any escape or escapes, action or actions, whatsoever, which shall or may be brought, or prosecuted against him or them, by reason thereof; and if any action shall be commenced against any sheriff or officer, for performing his duty in pursuance of this act, he may plead the general issue, and give this act in evidence: *Provided always*, That notwithstanding such discharge, it shall be lawful for any creditor or creditors, by judgment, at any time afterward, to sue out a writ of *fieri facias*, to have an execution against any lands or tenements, goods or chattels, which such insolvent person shall thereafter acquire, or be possessed of; but no person, delivering in such schedule, and having taken the said oath, shall again be imprisoned on account of any judgment which shall have been obtained against him, previous to the time of taking such oath, unless by virtue of a *capias ad satisfaciendum*, directed to issue by the court in which the said judgment shall have been rendered: *And*

Schedule of debtor's effects to be rendered on oath.

[a1833—(18) *Sec.* 1.]

Property subsequently acquired, liable to execution.

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[1] The prisoner may be discharged without notice, when the plaintiff in execution lives in another county, and has not appointed an agent in the county of the defendant's residence.—See "Executions,"—§ 75.

provided also, That any person confined within the limits of any prison bounds, shall be entitled to the benefit of this act, in the same manner, and under the same regulations, as those confined in jail; and all bonds given for the keeping of the said prison bounds, shall be null and void, after such prisoner shall be so discharged.[a]

Debtors in the bounds, may have the benefit of this act.

[a] *See* § 12.

Ib. Sec. 24. **Sheriff to sell property.**

§ 3. All the estate which shall be contained in such schedule, and any other estate which may be discovered to belong to the prisoner, or such interest therein as such prisoner hath and may lawfully depart withal, shall be vested in the sheriff of the county, wherein such lands, tenements, goods, or chattels, shall lie or be found, and such sheriff is hereby authorized, empowered, and required, within sixty days after the taking of the said oath, ten days previous notice of the time and place of sale being given, to sell and convey the same to any person or persons whatsoever, for the best price that can be got for the same; and the money arising from such sale, shall be by such sheriff or officer paid to the creditor or creditors, at whose suit such prisoner or prisoners shall be imprisoned, saving to every such prisoner, his or her necessary apparel, utensils of trade, and arms for the defence of himself and his country; and if any sheriff or other officer, shall fail to pay the money arising from such sale according to law, he shall be liable to the same penalty, to be recovered in the same manner, and by the same persons, as if the said money had been levied by a *fieri facias*.

Ib. Sec. 25. **Debts, or property in possession of another, how recoverable.**

§ 4. When any insolvent debtor shall be discharged pursuant to this act, and the schedule subscribed and delivered in by such prisoner, shall contain money due to such prisoner, or of goods, chattels, or estates, belonging to him, and in the possession of another, in that case the clerk of the court, with whom such schedule is directed to remain, shall immediately issue a summons against each of the persons named as debtors in the said schedule, and against such others as are therein said to have possession of any goods, chattels, or estates, of the property of the prisoner, reciting the sum of money he or she is charged with, or the particular goods, chattels, or estates, said to be in his possession, and requiring him or her to appear at the next court, and declare on oath, whether the said money or any part thereof, be really due to such prisoner, and whether such goods, chattels, or estate, be really in his or her possession, and are the property of such prisoner; and if the person so summoned shall fail to attend according to such summons, or to show good cause for his non-attendance, it shall be lawful for the court to enter judgment against every such person for the money, goods, chattels, or estates in such schedule mentioned, together with costs of suit, a lawyer's fee excepted, and if any such person so summoned, shall appear and be sworn, judgment shall be entered for so much of the money, goods, or chattels, or estates, as he or she shall acknowledge to be due, or to be of the property of such prisoner, and in his possession, with costs as aforesaid,[1] which judgment shall be entered in the name of the sheriff, who may thereupon proceed to levy the execution, as in other cases, and to dispose of the money, goods, chattels, or estates, so recovered, in the same manner as the estate contained in the schedule, is hereby directed to be disposed of: *Provided always*, That where any such garnishee shall not acknowledge the whole money to be due, or all the goods, chattels, or estates, mentioned in the schedule, to be the property of the prisoner, and in his possession, the sheriff, or such

Proviso.

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[1] Garnishee is liable to costs *only* after summons and default.—See "Garnishment,"—§ 6.

prisoner, at any time after, unless barred by any of the acts limiting the time for the commencement of actions, shall be at liberty to claim the residue by legal process, and the former judgment as to such garnishee, shall be no further bar in such process, than for so much money, or such goods, chattels, and estates, as the garnishee is thereby ordered to pay or deliver.

Ib. Sec. 26.
Allowance to the sheriff, what, and how paid.

§ 5. Every sheriff shall be allowed to retain out of the effects of such insolvent debtor, before the distribution thereof, all reasonable expenses in recovering such money, goods, chattels, and estates as aforesaid, including such a fee to a lawyer for the proceeding against the garnishee, as shall be judged reasonable by the court; and if such effects be not sufficient, he shall be reimbursed such expenses by the creditor or creditors, if more than one, in proportion to their demands.

Ib. Sec. 27.
Fees for keeping insolvent debtors, how paid.

§ 6. Where such insolvent shall not be able to satisfy or pay his ordinary prison fees, the sheriff or jailer may demand and receive of the party or parties at whose suit such insolvent person shall be imprisoned, all such fees as shall become due, until such creditor shall agree to release such prisoner; and if the creditor, upon notice given to him or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailer, for the payment of such prison fees, or shall fail to pay the same when demanded, such sheriff or jailer shall discharge such debtor out of the prison: *Provided, nevertheless,* That such insolvent prisoner shall be afterward liable to the action of the creditor to recover such fees; and such creditor may, notwithstanding his consent to the releasing such prisoner, at any time afterward, sue out a *scire facias* to have a new execution against the lands and tenements, goods and chattels of such prisoner, in case he or she shall afterward become possessed of any.

Ib. Sec. 28.
Debtor to be allowed only single ration, and sheriff single fees.

§ 7. When any debtor is in custody on several executions, it shall not be lawful for such debtor to demand any more or other diet, than if he was in custody on one execution only; nor shall any sheriff or jailer demand or receive more than the rate fixed by law, in case of a debtor confined on one execution only, which shall be paid by the creditor at whose suit such debtor was first taken.

1811—(11)
Sec. 27.
Debtors in custody upon original or mesne process may be discharged in like manner.
a *See the preceding act.*

§ 8. Where any person may be in custody, upon original or mesne process, such person shall be entitled to the benefit of the provisions of the act entitled "An Act concerning executions, and for the relief of insolvent debtors,"[a] in the same manner as is therein provided for persons charged in execution: *Provided nevertheless,* That no plaintiff, in any suit against any person, who may have availed himself or herself of the provisions of the aforesaid act, and who shall not have obtained final judgment against such defendant, taking the benefit of the aforesaid act, shall receive any part of the proceeds of the estate of such prisoner, in the distribution thereof, to the prejudice of any person who may have charged the same prisoner in custody upon execution.

1821—(7)
Sec. 1.
Debtor wishing to surrender, shall give bond.

§ 9. When any person may be taken on mesne process, or be taken in actual custody, or be charged in execution, and be desirous to deliver up his or her property for the benefit of his or her creditors, in order to be discharged from arrest or imprisonment, he or she shall enter into bond with sufficient security, for the amount for which he or she shall be taken into custody, or be charged in execution, to the sheriff or other officer arresting such person, or charging him or her in execution, conditioned that he or she will personally appear and make surrender, in such manner as is now required by law, of his or her property or effects, for the benefit of his or her creditors, at such time and place as may be designated by the judge, or two justices of the county, where such person may make his or her application;(1) or when any person may conceive him or herself unable to pay, satisfy, or discharge, his or her debts, and may be desirous to exonerate him or herself from arrest, confinement, or the operation of legal process, and shall make known to any judge of the circuit courts of this state, or to any judge of the county court, or to the justices of the peace of the county where the application may be made, the names and residence of his or her creditors, or where they resided when the debts were contracted, and of his or her wish and intention, to exonerate him or herself from imprisonment, arrest, or legal process, it shall be the duty of the judge or justices to whom the application may be made, to appoint a time and place, and to cause at least ten days' notice to be given to the creditors, their agents, or attorneys, if within this state, and if without the state, twenty days' notice by advertisement in some public paper or papers, near where the creditors resided when the debts were contracted, or by causing notice to be served on them, of the application of the debtor, and of the time and place appointed by him or her to make his or her surrender, and to obtain for his or her person, a discharge from arrest or confinement.

How persons not under arrest, may have the benefit of this law.

Creditors to be notified.

Ib. Sec. 2.

Applicants for surrender to deliver schedule with oath.

§ 10. The applicant coming before the judge or justices, (as the case may be,) at the time and place appointed, shall subscribe and deliver in a schedule of his whole estate, and make oath to the effect of that now required by law, in relation to insolvent debtors, with the exception of such articles as are, or hereafter by law may be reserved to every family, or be exempted by law from seizure or execution, which schedule, and the property therein mentioned, shall be disposed of in the manner directed by the existing laws, for the benefit of his or her creditors generally. Whereupon such debtor shall be discharged by warrant from the judge or justices, to whom the application may be made: *Provided, nevertheless,* That it shall be lawful for any creditor or creditors, to prosecute his or their claim or claims to judgment, or by judgment at any time afterward obtained, to sue out a writ of *scire facias,* and to have execution against any lands or tenements, goods or chattels, which such insolvent person may thereafter acquire, or be possessed of; but no person delivering in such schedule, and having taken the oath prescribed by this section, shall afterward be subject to imprisonment, arrest, or confinement, on account of any debts contracted, due, or owing, previous to the surrender of his or her property.

Debtors to be discharged.

Property acquired after surrender subject,

but no imprisonment for previous debts.

Ib. Sec. 3.

Penalty for false return.

§ 11. Any insolvent debtor who may wish to avail himself of the benefit of this act, and who shall wilfully and knowingly make a false return and surrender of his or her property or estate, or any part thereof, under the provisions of this act, and be convicted thereof, shall be subject to all the pains and penalties prescribed by law against perjury, and shall never thereafter be entitled to the privileges or benefits extended by this act.

Ib. Sec. 4.

Time limited.

§ 12. No person in custody shall have the liberty of the prison bounds, who shall neglect or refuse for sixty days, to take the benefit of this act.

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(1) A security in a bond for the appearance of an insolvent debtor, to render his schedule, &c. under the act of 1821, is not liable, if the debtor does appear and obtain his discharge, although it be obtained fraudulently, provided the security be not a party to the fraud;—and such defence may be pleaded to an action on the bond. Davis' Executors *v.* Cathey, 1 *Stewt. Rep.* 402.

Ib. Sec. 5.
Persons fined, may take the benefit of this act.

§ 13. All persons ordered to be imprisoned for failing to pay any fine imposed by law, who shall be unable to pay the same, shall have the benefit of this act, subject to the same rules and restrictions applicable to other debtors.

1824—(30)
Sec. 1.
Debtor's bond to be assigned to the plaintiff.
a *See* § 9.

Form of endorsement.

Bond forfeited, to be returned to the clerk's office, or to the justice issuing process.

§ 14. The bond directed to be taken by the first section of an act entitled "An Act amendatory to the laws now in force for the relief of insolvent debtors," passed June fifteenth, one thousand eight hundred and twenty-one,[a] from any person taken on mesne process, or in actual custody, or charged in execution, and who may be desirous of delivering up his or her property for the benefit of his or her creditors, in order to be discharged from arrest or imprisonment, shall, by the sheriff or other officer to whom such bond is, by said act, directed to be given, be assigned to the plaintiff or plaintiffs at whose suit such person shall be arrested, charged in execution, or taken into custody, by endorsement thereon, in the following form, to wit: "I, A. B., sheriff (or coroner, or constable as the case may be) of the county of   , do hereby assign the within obligation and condition to C. D., his executors and administrators, to be sued for according to the statute in such cases made and provided. In witness whereof, I have hereunto set my hand and affixed my seal, this   day of   , in the year of our Lord,   :" which assignment shall be made before the time mentioned in the condition annexed to such bond, for the personal appearance of the principal obligor thereof, and the surrender of his or her effects; and should such bond be forfeited, the sheriff or other officer taking the same shall, within ten days after the time of such forfeiture, return the bond to the clerk's office of the court from which the mesne process or execution issued, and by virtue of which the principal obligor on such bond was arrested or taken in execution, or to the justice of the peace who issued such process or execution, (as the case may be,) with an endorsement on such bond, that the same is forfeited.

Ib. Sec. 2.
When the bond is returned to court forfeited, a *scire facias* shall issue against the obligors.

Defendants failing to appear, judgment by default.

§ 15. When any bond shall be returned forfeited to the clerk's office of any county or circuit court of this state, pursuant to the provisions of the first section of this act, it shall be the duty of the clerk to whose office the same may be so returned, on application of the person or persons to whom such bond may be assigned, his or their agent or attorney, to issue a *scire facias* returnable to the next county or circuit court, as the case may be, against all the obligors in such bond, or any or either of them, or all or either of their executors or administrators, requiring them, or any or either of them, to appear at such court and show cause why the plaintiff or plaintiffs should not have execution against them, for the full amount claimed by the plaintiff or plaintiffs to the mesne process or execution, by reason of which the principal obligor to such bond was arrested or charged in execution; and upon such *scire facias* returned "made known," the defendant or defendants shall appear and plead, and trial be had at the first term, unless sufficient cause be shown for a continuance: *Provided,* That if such defendant or defendants do not appear and plead, within the first three days of the court to which such *scire facias* shall be returned "executed," the plaintiff or plaintiffs may take judgment by default: *And provided also,* that the return of two *nihils* shall be considered a service.

Ib. Sec. 3.
When the bond is returned forfeited, to justice of the peace, a summons in nature of a *sci. fa.* shall issue.

§ 16. Where any bond shall be returned "forfeited," before any justice of the peace of any county in this state, pursuant to the provisions of the first section of this act, it shall be the duty of such justice, upon the application of the person or persons to whom such bond may be assigned, his, her, or their agent or attorney, to issue a summons in the nature of a *scire facias,* against all, any, or either of the obligors to such bond, their or either of their executors or administrators, requiring them, any or either of them, to appear at the same time and place therein specified, before himself or some other justice of the peace of the county where the same may be issued, to show cause, if any they can, why the plaintiff or plaintiffs in such summons should not have execution against them for the amount of the execution, by virtue of which the principal obligor in such bond was taken or charged in execution; and upon the return of such summons "executed," the defendants shall be ruled to trial immediately, unless good cause be shown for a continuance.

§ 17. The plaintiff or plaintiffs to a *scire facias*, issued pursuant to the second section of this act, and the plaintiff or plaintiffs to a summons issued pursuant to the provisions of the third section of this act, shall be entitled to recover of the defendant or defendants, to such *scire facias* or summons, the full amount of the sum due by the execution or executions, or other process, mentioned in the condition of the bond, on which such *scire facias* or summons may be founded, together with interest, and the costs of such *scire facias* or summons.

Ib. Sec. 4. Plaintiff in *sci. fa.* or summons, to recover full amount due, with interest and costs.

§ 18. If any sheriff, coroner, or other officer, shall fail to assign, endorse, and return any bond taken by him from any insolvent debtor, as required by the first section of this act, such sheriff, coroner, or other officer, shall be liable to the party injured thereby, to the full amount of the injury sustained, to be recovered before any court having jurisdiction thereof.

Ib. Sec. 5. Penalty on officer for failing to assign and return bond.

§ 19. In cases where insolvents have been heretofore discharged, and no proceedings have been had to collect the debt due such insolvents, the schedules of such insolvents shall be returned to the office of the clerk of the county court, and the judge of said court shall appoint one or more persons as commissioners in each case, who shall have authority to collect and recover all debts, property, and estate due such insolvents, which are included in such schedules, or which may be omitted through the fraud of such insolvents, or otherwise; and the money when recovered shall be distributed as now required by law: and the proceedings may be carried on in the names of such insolvents, it being stated on the original process, that the plaintiffs therein are insolvent debtors; and the death of such insolvents shall not affect such proceedings.

Ib. Sec. 6. Where debts due to insolvents remain unpaid, judge of county court shall appoint commissioners to collect them.

INSPECTION—Staves, Rosin, Tobacco, &c.

§ 1. The county court of any county in this state, in which a port of entry is now, or hereafter may be established, is hereby authorized and empowered to appoint one or more fit and suitable persons, as inspectors of tar, turpentine, pitch, rosin, and lumber.

1819—(23) Certain county courts may appoint inspectors.

§ 2. Each inspector, before he enters upon the duties of his office, shall enter into bond, with two good and sufficient securities, to be approved of by the said court, payable to the governor for the time being, and his successors in office, in the sum of one thousand dollars, for the faithful performance of the duties of his office; and likewise, shall take and subscribe the following oath: "I, ——— ———, do solemnly swear, (or affirm,) that according to the best of my abilities, I will comply with, and faithfully fulfil the duties of inspector, according to law: So help me God."

Inspector to give bond, and take oath.

§ 3. All staves for exportation shall be made of good and sound timber, free of worm-holes, and shall be of the following qualities and

What staves and heading, merchantable.

dimensions, viz: Each pipe stave shall be made of white-oak, fifty-four inches long, three inches wide, and one inch[1] thick at the thin edge, free of sap: each white-oak hogshead stave shall be forty-two inches long, three and one-half inches wide, and not less than seven-eighths of an inch thick at the thin edge, and free of sap; each red-oak hogshead stave shall be forty-two inches long, three and a half inches wide, and not less than three-fourths of an inch thick, at the thin edge; each hogshead heading shall be made of white-oak, thirty-two inches long, five inches wide, and not less than one inch thick at the thin edge, and free of sap; each white-oak barrel stave shall be thirty-two inches long, three and a half inches wide, and not less than three-fourths of an inch thick at the thin edge, and free of sap; each red-oak barrel stave shall be thirty-two inches long, three and a half inches wide, and not less than one inch thick at the thin edge; each barrel heading shall be made of white-oak, nineteen inches long, six inches wide, and not less than three-fourths of an inch thick at the thin edge, and free of sap. Each and every barrel of pitch or rosin shall be hooped with six good hoops on each end, and shall weigh three hundred and twenty pounds gross; each barrel of tar and turpentine shall be in good barrels, made of seasoned timber, and shall be bound with seven good hoops on each end, shall be well packed, free of water, strained and clear, without chips, filth, or dirt, and shall contain thirty-two gallons.

Pitch and rosin.

Tar and turpentine.

Inspector shall brand each barrel of pitch, &c., and record the quantity, &c.

§ 4. Each inspector appointed as aforesaid, shall brand his name at full length, and place of residence, on one head of each and every barrel of pitch, rosin, tar, and turpentine, that he may inspect and pass as merchantable, according to the requisitions of this act; he shall also keep a book, in which he shall enter the quantities of each and every article by him inspected and passed, the name of the person for whom the same was inspected, and his place of residence; and shall give a certificate of the same when required, after the fees for inspecting the same shall have been paid him, charging for said certificate twenty-five cents. It shall moreover be the duty of each and every inspector, appointed under the provisions of this act, to have and keep a brand for the purpose; and each and every barrel of pitch, rosin, tar, and turpentine, that he may be called to inspect, and which shall not be competent to contain the quantities, as before required in the third section of this act, or in any barrel in which he may discover any intentional fraud or neglect, in the manufacture or putting up of the same, to brand on each head and bung-stave, the word "*Condemned.*"

Barrels of pitch, &c., not conformable to this law, to be "*condemned.*"

Penalty for exporting articles not inspected or or condemned.

§ 5. If any person or persons shall export, or attempt to export from any port or place in this state, to a port or place in another state, or foreign port, any of the articles above enumerated, not having been inspected according to the true intent and meaning of this act, or shall attempt to export any that have been condemned by an inspector, he or they shall forfeit the whole of the article or articles so attempted to be exported; to be recovered by action, in any court having jurisdiction of the same, the one-half of the proceeds thereof to the use of the person suing for the same, the other half to the state.

Ib. Sec. 7. Inspector required to detect fraud in pitch and rosin.

§ 6. Should any inspector have reason to suspect a fraud, in any barrels of pitch or rosin, that he may be called to inspect, it shall be his duty, and he is hereby authorized, to cut open any number of barrels, not exceeding one for every ten of the whole number so suspected; and upon finding the same partly filled with anything other than pitch or rosin, with intent to defraud, in that case the whole number shall be condemned, and branded accordingly, with the word "Condemned;" and the said inspector shall sell, or cause the same to be sold, at auction, within five days; and the net proceeds thereof, pay into the treasury of the state: and he is hereby required to keep a true and faithful account of the same, in a book for the purpose, and shall be allowed five per centum on the proceeds of all such condemned articles.

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[1] Three-fourths of an inch,—See § 8.

If condemned, to sell it.

§ 7. If any inspector appointed as aforesaid, shall knowingly and wilfully fail to comply with the duties and requisitions of this act, or shall pass as merchantable any of the before enumerated articles, other than is expressly permitted and required by law, he shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt, in any court having jurisdiction of the same, the one-half to the person suing for the same, the other half to the state; and the county court shall thereupon displace him from the office of inspector: *Provided*, That no person shall be eligible to hold the office, or exercise the duties of inspector of any article or articles that he may buy, sell, and traffic in.

Ib. Sec. 8.
Neglect of inspectors, how punished.
Who ineligible as inspectors.

§ 8. All white-oak hogsheads and pipe staves intended for exportation, shall hereafter be of the following dimensions, to wit: hogshead staves, forty-two inches long, three and one-half inches wide, and three-fourths of an inch thick, on the thin or heart edge, clear of sap; pipe staves, fifty-four inches long, not less than three inches wide, and three-fourths of an inch thick, on the thin or heart edge, clear of sap.

1820—(27)
Sec. 1.
Pipe and hogshead staves for exportation.

§ 9. It shall be the duty of the inspector of staves, when required so to do by the purchaser or seller of staves, of any kind, to cull the merchantable from the refuse staves, and the refuse staves so culled shall be the property of the seller: *Provided however*, That in the event of any person or persons shipping or attempting to ship, any such refuse staves, he or they shall be liable to the same penalties as are imposed by the act of which this is an amendment. And the inspector of staves, who may cull staves, as required by this act, shall receive the following fees of inspection, to wit: for white-oak hogshead and pipe staves, and hogshead heading, seventy-five cents per thousand; for inspecting red-oak hogshead staves, red-oak barrel staves, and white-oak barrel staves, and heading, fifty cents per thousand; and for inspecting and branding pitch, rosin, tar, and turpentine, four cents per barrel.

Ib. Sec. 2.
Inspector to cull staves, if required.
Fees.

§ 10. In all cases where there is no agreement between the seller and purchaser of any article of lumber, staves, and naval stores, to the contrary, all expenses of inspection and directing charges, where said articles are carried to market on rafts, shall be borne and paid jointly by the parties.

Ib. Sec. 3.
Certain expenses to be jointly borne by seller and purchaser.

§ 11. No person shall put on board, or receive into any ship, brigantine, schooner, sloop, bylander, boat, or other vessel, in order to be exported therein, any tobacco which shall not have been packed in hogsheads or casks, upon any pretence whatever, before the same shall have been received and inspected according to the directions of this act. All tobacco whatever to be received or taken on board of any ship, brigantine, schooner, sloop, bylander, or other vessel, and to be therein exported, or to be carried and put on board any other ship, brigantine, schooner, sloop, bylander, or other vessel, for exportation as aforesaid, shall be received or taken on board at the several warehouses for that purpose hereinafter mentioned, or some one of them, and at no other place or places whatever; and if any com-

1828—(5)
Sec. 1.
Tobacco to be packed and inspected, before exported.

Penalty on masters of vessels for violating this act.

mander or master of any ship, or other vessel, shall take on board, or suffer to be taken on board the ship or vessel whereof he is master, any tobacco brought from any other place, than such public place herein mentioned, or any hogshead or cask of tobacco not stamped by such lawful inspector, or shall suffer to be brought on board any tobacco except in hogsheads or casks stamped as aforesaid, every such commander or master shall forfeit and pay fifty dollars for each hogshead, one moiety thereof to the use of the informer, and the other moiety to the use of the state, to be recovered before any justice of the peace for the county in which said cause of action may accrue.

Ib. Sec. 2. Warehouses for inspection, in Mobile and Selma. Rate of storage.

§ 12. Public warehouses for the inspection of tobacco pursuant to this act, shall be kept at the several places hereinafter mentioned, to wit: at the city of Mobile, and town of Selma; and the proprietor of each warehouse is hereby entitled to demand and receive for the storage of each hogshead of tobacco inspected at his warehouse, fifty cents; *Provided*, That the said tobacco does not lie longer in said warehouse, than twelve months, and for every month after, the owner or proprietor of such tobacco shall pay at the rate of twelve and a half cents per month, which duty or storage shall be paid to the several inspectors, before the same shall be removed from the said warehouse, who shall be answerable to the owner or proprietor thereof, for the full amount of such storage, by them received. And the inspectors shall be entitled to one dollar for each hogshead of tobacco delivered, to be paid in like manner as warehouse rents or storage are, and to be divided between the two acting inspectors as their full fee for inspection, and no inspector shall receive a salary or other fee, except what is allowed by this act.

Inspectors entitled to one dollar per hogshead.

Ib. Sec. 3. Inspectors to provide and keep scales and weights.

§ 13. There shall be kept at the several warehouses hereby established, and all others hereafter to be established, a good and sufficient pair of scales, with weights sufficient to weigh fifteen hundred-weight at least, and a set of small weights, the same that are or ought to be provided for the standard weights of each county, and the proprietors of such warehouse shall provide the same.

Ib. Sec. 4. Tobacco shall be viewed by inspectors to be appointed by judge of county court, and commissioners of revenue and roads.

§ 14. All tobacco brought to any public warehouse, shall be viewed, inspected, and examined by two persons thereunto appointed, who shall be called inspectors, and shall be appointed in the following manner, to wit: the judge of the county court and commissioners of the revenue and roads in the counties where any warehouse may be established, except as hereinafter excepted, shall, at their county courts, held on the third Monday of August in each year, appoint three fit and proper persons for inspectors at each of the several warehouses in their respective counties, who shall receive a certificate of such appointment by the clerk of the county court of the county wherein such appointment may be made; the two first in nomination shall be considered as acting inspectors for the ensuing year, and in case of sickness, death, or inability of either of the first inspectors, the third shall act, and also on the disagreement of the said inspectors, the third shall be called in to decide on such hogshead or hogsheads of tobacco; and on complaint in writing being lodged in the office of the clerk of the county court, and being duly notified thereof by such clerk, such judge and commissioners, or a majority of them shall, within three days after such notice to them given, summon the inspector before them, first ordering a copy of the complaint to be served on him or them; within five days thereafter such judge and commissioners shall consider such complaint, and may continue or dismiss from office him or them, as the court shall judge just; and such court shall fill all vacancies that may

Inspectors may be dismissed from office, on complaint lodged with clerk of county court.

Inspector to give bond.

happen at any of their said courts, to continue to the end of their inspection: *Provided always*, That the third inspector, on the death or removal of any inspector in the same nomination, shall be considered as inspector and act accordingly; and every person appointed inspector by virtue of this act, shall, before he enters on the execution of his office, give bond with security in the penalty of two thousand dollars, payable to the governor for the time being and his successors, conditioned for the true and faithful performance of his duty according to the directions of this act, and be liable to be put in suit upon any neglect of duty; which bond shall be approved by the judge of the county court, and deposited in the clerk's office of said court.

Ib. Sec. 5. Inspectors to attend warehouses from 1st Sept. to 1st May.

§ 15. All inspectors to be appointed by virtue of this act, shall attend at all times when required by any owners of tobacco, at the warehouse or houses under their charge, from the first day of September until the first day of May annually, Sundays excepted, or when prevented by sickness; and afterwards they or one of them shall attend to deliver tobacco for exportation, until all the tobacco remaining there on the said first day of May shall be delivered; and no inspector shall be obliged to view any tobacco between the said first day of May and the first day of September; and every inspector neglecting to attend as aforesaid shall forfeit and pay to the party aggrieved, one dollar for every neglect, and shall be liable to an action to recover all such damages as he or they shall have sustained by occasion of any such neglect, together with his or their full costs; and that all persons having tobacco at the public warehouse may have equal justice, the inspector shall enter in a book to be kept for that purpose, the mark and owner's name of all tobacco brought to their respective warehouses for inspection, as the same shall be brought in, and shall review and inspect the same in due time as it shall be entered in such book, without favor or partiality; and in case they shall break any hogshead of tobacco brought them to be inspected as aforesaid, and if they shall agree that the same is good, sound, well conditioned, merchantable, and clear of trash, then such tobacco shall be weighed in scales with weights of lawful standard, and the hogshead or cask shall be stamped in the presence of the said inspectors, or one of them, with the name of the warehouse at which inspected, and also the tare of the hogshead or the cask, and quantity of net tobacco therein contained; and the inspectors at such warehouse shall sign a receipt for each hogshead of tobacco they shall pass, if required by the owner, if the same weigh nine hundred and fifty pounds at least, which receipt shall state the quantity and quality of tobacco, whether first, second, or third rate; and if such tobacco shall not be considered merchantable, it shall not be of either quality, and returned by said inspector to the owner.

Penalty for neglect.

Tobacco to be entered in a book as brought in, and inspected accordingly.

Hogshead stamped, and receipt given.

Tobacco not merchantable, to be returned to owner.

Ib. Sec. 6. Size of hogsheads.

§ 16. The size of the hogshead or cask shall not exceed forty-nine inches in length, and thirty-one inches in the rising head, and to weigh, nine hundred and fifty pounds at least; *Provided*, That nothing herein contained shall prevent any person or persons from sending chewing-tobacco to market in less quantities than five hundred pounds.

Note.—The mayor and aldermen of the city of Mobile are authorized to appoint inspectors of oil, and an inspector of flour, salt, and fish. See "Oil."

INTEREST.

1811—(11) *Sec.* 25. Partial payments made, interest first credited.

§ 1. When partial payments are made on bonds, contracts, or assurances for the payment of money, or property, that bear interest, agreeably to the laws of this territory, the interest that then thus accrued shall be first credited, and the balance of such partial payment shall be placed to the payment of the principal.

1818—(5) Eight per cent. allowed on all contracts. (*See "Usury."*)

§ 2. On all contracts, written or verbal, ascertaining the sum due, where no specific premium or rate of interest is expressed, interest shall be taken, recovered, and allowed, at the rate of eight per centum per annum, from and after said sum is due and payable.

Banks allowed only 6 per cent.

§ 3. Nothing in this act contained, shall be so construed as to make it legal for any bank to receive more than at the rate of six per centum per annum, for and upon its loans and discounts.

1818—(10) *Sec.* 1. Notes not exceeding one dollar, to bear interest at the rate of 100 per cent.

§ 4. All notes or bills for a sum not exceeding one dollar, drawn by any individual or private copartnership, or association, or corporate body, (except regularly chartered banks,) and made payable to any person, or order, or bearer, or simply expressing a sum due, shall be deemed and taken to bear interest at the rate of one hundred per centum per annum, calculating the said interest from the date of such notes or bills as may be hereafter issued, and from the time of presentment for payment of such as have been issued before the passage of this act.

1818—(14) Judgments to bear interest.

§ 5. All judgments shall bear interest from their date, at the rate established by law for contracts specifying no rates.

Note.—Banks refusing specie payment, are liable after demand, and during such refusal, to pay interest on their notes at the rate of twelve per cent. per annum.—See Con. Ala. Art. 6.—Banks. (Rule 6. p. 56.) Judgments rendered on motion against constables, for failing to pay over money collected by them, bear interest at the rate of five per cent. per month.—See "Executions."—§ 81.

JUDICIARY—Judges and Courts.

Con. Ala. Art. 5. *Sec.* 1. Judicial power, where vested.

§ 1. The judicial power of this state shall be vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain, and establish.

Sec. 11. Compensation of judges.

§ 2. Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this state, the United States, or any other power.

Sec. 12. Judges, how elected.

§ 3. Chancellors, judges of the supreme court, judges of the circuit courts, and judges of the inferior courts, shall be elected by joint vote of both houses of the general assembly.

Sec. 13. (*Amendment, Jan.* 16, 1830.) Term of service. How removed.

§ 4. The judges of the several courts of this state shall hold their offices for the term of six years; and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly: *Provided however*, That the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house: *And provided further*, That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and in all such cases, the vote shall be taken by yeas and nays, and entered on the journals of each house respectively: *And provided also*, That the judges now in office may hold their offices until the session of the general assembly, which shall be held in the year one thousand eight hundred and thirty-three, and until their successors shall be elected and qualified, unless removed by address or impeachment.

Those in office may remain until session of 1833.

§ 5. No person who shall have arrived at the age of seventy years, shall be appointed to, or continue in, the office of judge in this state.

Sec. 14. Age disqualifies.

§ 6. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state; as also the judges of the circuit courts in their respective districts, and judges of the inferior courts in their respective counties.

Sec. 16. Judges, conservators of the peace.

§ 7. All courts shall be open, and every person for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Art. 1. *Sec.* 14. Courts to be open, &c.

§ 8. The right of trial by jury shall remain inviolate.

Sec. 28. Trial by jury.

§ 9. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself, or counsel.

Sec. 29. Right of prosecuting and defending.

SUPREME COURT.

§ 1. THE supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Provided*, That the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions. (1)

Con. Ala. Art. 5, *Sec.* 2. Powers of the supreme court.

§ 2. Until the general assembly shall otherwise prescribe, the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts within this state: and they, or a majority of them, shall hold such sessions of the supreme court, and at such times as may be directed by law: *Provided*, That no judge of the supreme court shall be appointed before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five.

Sec. 3. To be held by judges of circuit court until otherwise directed.

§ 3. The supreme court shall be holden at the seat of government, but may adjourn to a different place, if that shall have become dangerous from an enemy or from disease.

Sec. 4. To be holden at seat of government.

§ 4. The judges of the supreme court of errors and appeals, and each of them, shall have power and authority to issue forth writs of error, to the several superior courts of law and equity, to remove any judgment or decree, either at common law or in chancery, into the said supreme court; and also writs of *certiorari*, *habeas corpus*, and

1814—(4) *Sec.* 4. Powers of the judges, and duties of the court.

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(1) The supreme court has a general supervising power over all inferior judicial tribunals which may be erected, to prevent the violation of a positive right. Bell et al. *v.* Payne and Williams. 2 *Stewt. Rep.* 413.

all remedial and other writs and process, properly allowable by a judge of the supreme court of errors and appeals, returnable to the same; and the said supreme court shall hear and determine all manner of pleas, plaints, and causes, both at law and in equity, which shall be removed, and brought before it, from any of the superior courts of law and equity, and all causes, matters, and things, cognizable in the same; but no cause shall be removed into the said supreme court, until after final judgment in the court below, except where the judge or judges in the said court below shall doubt as to the law, or rule of decision; and in that case, he or they may respite the final judgment, and refer the question to the said supreme court, for their determination; and if the point or question does not appear on the record, it shall be the duty of the judge in the court below to state the same in writing, and send it, with the other proceedings in the cause, to the said supreme court, who shall have power and authority to grant judgment thereon, according to the right of the matter, and award execution, except it be necessary, in consequence of the determination of the said supreme court, that facts be ascertained, or damages assessed by a jury, in which case the cause shall be remanded to the court from whence it was brought.

1832—(31) *Sec.* 1. Writs of injunction and supersedeas.

§ 5. The judges of the supreme court are hereby authorized and required to grant writs of injunction and supersedeas in the same manner, and under the same regulations, as the judges of the circuit courts of this state are or may be authorized to grant the same.

1819—(6) *Sec.* 22. Judges to file their opinions in writing. On writ of error allowed, opinion of circuit judge to accompany the record.

§ 6. The judges of the court of errors and appeals, as well as the circuit court judges, shall, as to the decisions on all material points, file their opinions in writing, among the papers of the cause in which such opinion may be given, within ten days after such opinion may be delivered; and when a writ of error shall be allowed to reverse the judgment of any circuit court in any cause, the clerk thereof shall send a transcript of the opinion of the judge to the court of errors and appeals, as a part of the record of the cause, properly certified. (1)

Ib. Sec. 23. Judges to establish rules of proceedings in supreme court, and uniform practice in inferior courts.

§ 7. It shall be the duty of the judges of the court of errors and appeals, at the first term of said court, or as soon thereafter as may be practicable, to ordain and establish rules and regulations, for the government of the proceedings and practice in said court; also to establish a regular and uniform practice throughout all the courts of record in this state.

1832—(6) *Sec.* 1. Supreme court to be held by three judges. Tenure of office.

§ 8. The supreme court for this state, (both in law and equity,) shall hereafter be held by, and the powers of the same shall be vested in, and its duties shall be performed by, three judges, to be elected by joint vote of both houses of the general assembly, who shall be styled "Judges of the Supreme Court of Alabama," and shall hold their offices for and during the term of six years, from their appointment.

Ib. Sec. 2. Court to sit till all business is completed. To appoint chief justice.

§ 9. The said judges, or a majority of them, shall continue to hold the sessions of the said court, from day to day, (Sundays excepted,) until the business thereof be completed; and shall at their first session, appoint one of their own body, "Chief Justice of the Supreme Court," which appointment shall be entered of record: and in case of his absence at any succeeding time, one of the judges present shall be appointed "Chief Justice *pro tempore*," and all orders of the court shall be signed by him: *Provided always*, That one judge, or if no judge appears, the sheriff, may adjourn the court from day to day, until a sufficient mumber appear to constitute a court, if that shall be

One judge, or the sheriff, may adjourn court from day to day, and to next term.

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(1) Certiorari allowed by the supreme court, to bring up a transcript of the judge's opinion below. Olds *v.* Sargent, *Min. Rep.* 320.

before the sixth day of the term; at which time, if a sufficient number of judges cannot appear to form a court, the judge or sheriff, as the case may be, shall adjourn the court to the next stated term, to which term all cases shall stand continued.

§ 10. The said judges shall, before they enter upon the discharge of the duties of their office, take and subscribe the several oaths now required by law to be taken by the various officers of this state, which oaths so taken and subscribed, shall be filed in the secretary of state's office.

Ib. Sec. 3. Judges' oaths of office.

§ 11. The present clerk of the supreme court, shall continue in office until the expiration of the term for which he was elected; after which time the said judges of the supreme court shall have the appointment thereof.

Ib. Sec. 5. Clerk.

§ 12. Within three days after the judges of the supreme court shall have been elected, it shall be their duty to open said court, and proceed with the business thereof; and said court shall hereafter commence on the first Mondays in January and June in each year.

1832—(15) *Sec.* 3. Supreme court held first Monday in January and June.

§ 13. The judges of the supreme court, may hold adjourned terms of said court, for the trial of such causes as the counsel on both sides thereof may agree to set for trial at such adjourned term, to be called and heard in the order in which they are set for trial, of which the clerk shall make record; and it shall be the duty of the court to cause to be entered of record at the time of setting such causes for trial, the time of the commencement of such adjourned term.

1833—(37) *Sec.* 1. Judges of the supreme court may hold adjourned terms.

REPORTS OF DECISIONS.

§ 14. THE decisions of the supreme court shall be published at the expense of the state: and the governor of the state is hereby directed to cause proposals to issue for the publication thereof, for at least two months previous to giving said contract, and shall require bond and security for the faithful performance thereof.

1833—(31) *Sec.* 1. Decisions of the supreme court to be published by the state. Governor to give notice. Bond.

§ 15. The reporter appointed by the judges of the supreme court, shall prepare for publication a sufficiency of the decisions of the supreme court, which with the accompanying notes, memoranda and index, will compose a volume of at least five hundred pages: one volume of which shall be published yearly; and the said reporter shall be entitled to receive as his salary for preparing the said decisions for the press, making an index thereto, and revising the proof-sheets, the sum of one thousand dollars; and the comptroller, on the certificate of a majority of the judges of the supreme court that the decisions have been correctly reported, shall issue his warrant for the above amount.

Ib. Sec. 2. Reporter's duties. Salary.

§ 16. The said books shall be exposed to sale in the mode pointed out for the new digest, at a sum not exceeding five dollars.[1]

Ib. Sec. 3. Sale of reports.

§ 17. On the certificate of the governor of the state that the work has been correctly executed, the comptroller shall issue his warrant for the amount therein specified.

Ib. Sec. 4.

§ 18. The said reporter shall secure the copyright of the said book for the use of the state of Alabama, and shall be entitled to five hundred copies of the said book, to be published at his own expense, and not sold within the limits of this state.

Ib. Sec. 5. Reporter to secure copyright to state.

§ 19. There shall be delivered to the secretary of state, for the use of the state, eighty-five copies of all reports so published as soon as each volume shall be completed: [a]which copies shall be distributed

1831—(9) *Sec.* 2. To deliver secretary of state 85 copies. [a 1828—(19) *Sec.* 1 & 3.]

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[1] See "Laws."

How distributed. [a 1833—(18) Sec. 1.]

as follows, viz: to the governor, the judges of the supreme and circuit[a] courts, the judges of the several county courts, the attorney general, and the comptroller of public accounts, one copy each: four copies for the use of each house of the general assembly; and the residue shall be deposited in the office of the secretary of state; and in case of the death, resignation, or dismission from office of either of the officers before mentioned, the copies of the decisions delivered to them as aforesaid, shall belong and be delivered to their successors in office.

Circuit Court.

Con. Ala. Art. 5, *Sec.* 5. Circuits and judges.

§ 1. The state shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties: and for each circuit there shall be appointed a judge who shall, after his appointment, reside in the circuit for which he may be appointed.

Sec. 6. Jurisdiction.

§ 2. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this state, not otherwise excepted in this constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.

Sec. 7. Two courts a year. Alternation of judges.

§ 3. A circuit court shall be held in each county in the state, at least twice in every year, and the judges of the several circuit courts, may hold courts for each other, when they may deem it expedient, and shall do so when directed by law.

Acts from 1821 *to* 1833, *consolidated.* Circuits arranged.

§ 4. The state shall be divided into eight judicial circuits, to be composed of the counties, and to hold their sessions as follows, to wit: The first circuit shall be composed of the counties of Baldwin, Conecuh, Washington, Clarke, Monroe and Mobile.

1st Circuit. *Spring Terms.* Conecuh. Monroe. Clarke. Washington. Baldwin. Mobile.

The spring terms of the first judicial circuit, shall be holden at the times following, to wit:—In the county of Conecuh, on the second Monday in March, in each and every year, and continue one week; in the county of Monroe on the third Monday in March, and continue two weeks; in the county of Clarke, on the first Monday after the fourth Monday in March, and continue one week; in the county of Washington, on the second Monday after the fourth Monday in March, and continue one week; in the county of Baldwin, on the third Monday after the fourth Monday in March, and continue one week; in the county of Mobile, on the fourth Monday after the fourth Monday in March, and continue until the business before said court is disposed of.

Fall Terms. Washington. Clarke. Monroe. Conecuh. Baldwin. Mobile.

The fall terms of the first judicial circuit shall be holden as follows, to wit:—In the county of Washington, on the second Monday in October; in the county of Clarke on the third Monday in October; in the county of Monroe, on the fourth Monday in October; in the county of Conecuh, on the second Monday after the fourth Monday in October; in the county of Baldwin, on the third Monday after the fourth Monday in October; in the county of Mobile, on the fourth Monday after the fourth Monday in October; and may respectively continue the same length of time as at the spring terms.

2d Circuit. Dallas. Lowndes. Autauga. Bibb.

§ 5. The second judicial circuit shall be composed of the counties of Dallas, which shall commence on the fourth Mondays in March and September, and continue two weeks; of Lowndes, on the second Mondays after the fourth Mondays in March and September, and continue one week; of Autauga, on the third Mondays after the fourth Mondays in March and September, and continue one week; of Bibb, on the fourth Mondays after the fourth Mondays in March and Sep-

Perry. Wilcox.

tember, and continue one week; of Perry, on the fifth Mondays after the fourth Mondays in March and September, and continue one week; of Wilcox, on the sixth Mondays after the fourth Mondays in March and September, and continue until the business is completed.

3d Circuit. Greene. Tuscaloosa. Shelby. Talladega. Randolph. Benton.

§ 6. The third judicial circuit shall be composed of the counties of Greene, which shall commence on the first Mondays in March and September, and continue two weeks; of Tuscaloosa, on the third Mondays in March and September, and continue two weeks; of Shelby, on the second Mondays after the third Mondays in March and September, and continue one week; of Talladega, on the third Mondays after the third Mondays in March and September, and continue one week; of Randolph, on the fourth Mondays after the third Mondays in March and September, and continue one week; of Benton, on the fifth Mondays after the third Mondays in March and September, and continue one week.

4th Circuit. Limestone. Lawrence. Lauderdale. Franklin. Marion.

§ 7. The fourth circuit shall be composed of the counties of Limestone, which shall commence on the first Mondays in March and September, and continue two weeks; of Lawrence, on the third Mondays in March and September, and continue two weeks; of Lauderdale, on the second Mondays after the third Mondays in March and September, and continue two weeks; of Franklin, on the fourth Mondays after the third Mondays in March and September, and continue two weeks; of Marion, on the sixth Mondays after the third Mondays in March and September, and continue until the business is completed.

5th Circuit. Morgan. Blount. St. Clair. Jackson. Madison.

§ 8. The fifth circuit shall be composed of the counties of Morgan, which shall commence on the second Mondays in March and September, and continue one week; of Blount, on the third Mondays in March and September, and continue one week; of St. Clair, on the fourth Mondays in March and September, and continue one week; of Jackson, on the first Mondays after the fourth Mondays in March and September, and continue two weeks; of Madison, on the third Mondays after the fourth Mondays in March and September, and may continue until the business is completed.

6th Circuit. Butler. Covington. Dale. Henry. Barbour. Pike.

§ 9. The sixth judicial circuit shall be composed of the counties of Butler, which shall commence on the first Mondays in March and September; of Covington, on the second Mondays in March and September; of Dale, on the first Thursdays after the second Mondays in March and September; of Henry, on the third Mondays in March and September; of Barbour, on the fourth Mondays in March and September; of Pike, on the first Mondays after the fourth Mondays in March and September; each of which courts may continue in session one week, except Covington and Dale, which may hold three days.

7th Circuit. Marengo. Sumpter. Pickens. Fayette. Walker. Jefferson.

§ 10. The seventh judicial circuit shall be composed of the counties of Marengo, which shall commence on the first Mondays in April and October, and continue one week; of Sumpter, on the second Mondays in April and October, and continue one week; of Pickens, on the third Mondays in April and October, and continue one week; of Fayette, on the fourth Mondays in April and October, and continue one week; of Walker, on the first Mondays after the fourth Mondays in April and October, and continue one week; of Jefferson, on the second Mondays after the fourth Mondays in April and October, and continue one week.

8th Circuit. Montgomery. Coosa.

§ 11. The eighth judicial circuit shall be composed of the counties of Montgomery, which shall commence on the second Mondays in March and September, and continue two weeks; of Coosa, on the

Tallapoosa. Chambers. Russell. Macon.

fourth Mondays in March and September; of Tallapoosa, on the first Mondays after the fourth Mondays in March and September; of Chambers, on the second Mondays after the fourth Mondays in March and September; of Russell, on the third Mondays after the fourth Mondays in March and September; of Macon, on the fourth Mondays after the fourth Mondays in March and September; each of which courts, except Montgomery, shall continue one week.

Solicitors to continue, &c. Except solicitor of 6th circuit.

§ 12. All solicitors who may at this time reside out of the limits of their respective circuits, as established by this law, are hereby permitted to reside at their present places of residence until the expiration of their present term of service, except the solicitor of the sixth circuit, who is hereby authorized and required to perform the duties of solicitor of the eighth circuit during the remainder of his term of office.

Where held.

§ 13. The said circuit courts shall be holden at the court-houses of the several counties respectively, or at such other places as may be appointed by law.

1807—(17) *Sec.* 12. [a 1819—(6) *Sec.* 13.] Special sessions for the trial of criminals.

§ 14. A special session of any circuit court may be held by order of the judge or judges of the same, whenever it may be necessary for the trial of criminal causes: [a]and the said judges at their discretion shall have power, on the application of any person charged with a criminal offence, to hold a special session for the trial of such person; and the said judges shall direct the sheriff of the county in which such special session shall be holden, to return thereto twenty-four persons properly qualified to serve as jurors, who shall be selected in the manner now prescribed by law in such cases—any, or all of whom failing to attend, or being challenged or set aside, a jury of by-standers shall be empannelled for the trial of the cause.

1826—(38) *Sec.* 2. Extra court by any judge.

§ 15. Whenever it shall become necessary by the existing law, that the judge of any circuit should hold an intermediate court for any county, any judge not presiding in that circuit may hold the same.

Ib. Sec. 3. Judges shall hold an intermediate term for the disposal of unfinished business.

§ 16. If it should so happen, that any of the circuit courts should not be able to dispose of all the business depending in any of said courts at their regular terms, it shall be the duty of the judge of the circuit in which such undisposed of business may be, at a convenient time, between the regular terms of said courts in which such undisposed of business may be, to hold a special term or terms of such courts, which term and time shall be fixed, and notice thereof given, at the preceding regular term by the presiding judge of said court, and notice thereof given, by order of said court, in some respectable newspaper, in or nearest to said circuit, to which intermediate court a jury shall be summoned as directed by law to the regular terms of said court, as well as witnesses, whose testimony may be desired in said court: *Provided*, That the judge shall not be required to hold any one of said intermediate courts, longer than two weeks, which court shall be considered a continuance of the regular term: *Provided*, That nothing in this act shall be construed to prevent any one of the circuit judges in this state, from holding any of such intermediate courts as may be agreed on by them: *Provided also*, That said intermediate courts shall be devoted exclusively to the civil and chancery docket.

To continue only 2 weeks. To be devoted to the civil and chancery docket.

Ib. Sec. 4. Judge may hold a special court for the trial of slaves.

§ 17. Any judge of the circuit court, whenever he may deem it necessary, shall hold a special court for the trial of any slave or slaves, prosecuted for a capital offence, and for this purpose the clerk and sheriff shall be ordered to summon twenty-five jurors to attend the said court, for the trial of such slave or slaves.[1]

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[1] See "Criminal Law,"—§ 66.

1807—(14) *Sec.* 10. Sheriff to summon 3 constables to attend court.

§ 18. It shall be the duty of the sheriff to summon three constables to attend each circuit court, who shall attend accordingly, or pay a fine at the discretion of the said court, not exceeding ten dollars.

1807—(19) *Sec.* 1. Powers and duties of the territorial judges.

§ 19. The territorial judges, and every one of them, shall have power and authority, when, and as often as there may be occasion, to issue forth writs of *error*, *certiorari*, and *habeas corpus*, and all other remedial and other writs and process returnable to either of the circuit courts, and which are grantable by the judges, by virtue of their office. They shall in their said courts, hear and determine all causes, matters, and things, cognizable in the same; and also hear and determine all, and all manner of pleas, plaints, and causes, which shall be removed or brought there from any court to be holden for the respective counties, and examine and correct all, and all manner of errors of the justices of the inferior courts, in their judgments, process, and proceedings in the said courts, as well in all pleas of the government, as in all pleas, real, personal, and mixed, and thereupon reverse or affirm the said judgments, as the law doth or shall direct. They shall also examine, correct, and punish the contempts, omissions, neglects, favors, corruptions, and defaults of all or any of the justices of the peace, sheriffs, coroners, clerks, and other officers within their respective counties; and shall award process for levying, as well such fines, forfeitures, and amercements, as shall be estreated into the superior courts, as the fines, forfeitures, and amercements, which shall be taxed and set there and not paid, to the uses to which they are or shall be appropriated; and generally, shall minister ample justice to all persons, and amply exercise the jurisdiction and powers herein mentioned, concerning all and singular the premises, according to law.

Ib. Sec. 6. Territorial judges to be justices of assize, jail-delivery, &c

§ 20. The said territorial judges shall have power, from time to time, to deliver the jails of all persons who shall be committed, for treasons, murders, and other crimes and misdemeanors whatsoever; and for that end, from time to time, to issue forth such necessary precepts and process, and force obedience thereto, as justices of assize, justice of oyer and terminer, and of jail-delivery, may or can do within the United States.

Ib. Sec. 17. Court may grant judgment and award execution.

§ 21. The said courts, and each of them, may grant judgment according to the principles and usages of law, in all cases cognizable before them, and award execution, directed to the sheriff, or other proper officer of any county in this territory, which shall be executed and returned, according to the commands thereof.

Ib. Sec. 18. Grand jury to be empannelled.

Court to try offenders.

Judge may reserve points for the supreme court.

§ 22. At each of the said circuit courts, a grand jury of a competent number of good and lawful men of the county for which such court is held, shall be returned and empannelled agreeably to law, who shall inquire and true presentments make of all crimes, offences, and misdemeanors committed in their county; and thereupon, the judge of the said circuit court, is hereby empowered, authorized, and required, to try all offenders so presented, and upon legal conviction by a jury, or on confession of guilt in open court, to proceed to judgment and award execution thereon as the law directs: *Provided*, That the judge of the circuit court may, at his discretion, on a point reserved, motion in arrest of judgment, or for a new trial, in any criminal case, respite the judgment or sentence, and reserve such point or motion for the consideration of the supreme court, at their next succeeding term; and in such case, the supreme court shall pronounce judgment, sentence, or decree, as the law directs, and award execution accordingly.

1819—(6) *Sec.* 3. Court holden by one judge.

§ 23. The circuit courts shall be holden by one judge, who shall have been elected or appointed, and qualified, in manner and form prescribed by the constitution; and shall have cognizance and legal juris-

Jurisdiction of circuit court.

Powers of territorial, transferred to circuit courts.

diction of all pleas, real, personal, and mixed; and also of all suits and demands relative to legacies, filial portions, and estates of intestates; all pleas of the state, and criminal matters of what nature, degree, or denomination soever, whether brought before them by original or mesne process, or by *certiorari*, writ of *error*, appeal from any inferior court, or by any other ways or means whatsoever; and the circuit courts are hereby declared to have as full power and authority to give judgment, and to award execution, and all other necessary process thereupon, as heretofore belonged to the superior courts of law and equity in the territory; and to have, use, exercise, and enjoy the same powers and authorities, rights, privileges and preeminences, as were had, used, exercised, and enjoyed, by the said superior courts heretofore; except where it is otherwise directed by this or some other act, or where such authorities, rights, privileges, or preeminences, or any of them, may be inconsistent with, or repugnant to, the present form of government.

Ib. Sec. 4.
Judge failing to attend, sheriff shall adjourn court from day to day. Clerk shall enter continuance of causes, and bind over witnesses,

but parties may make up their pleadings.

§ 24. Where any circuit judge shall fail to attend on the first day of any term, the business thereof shall stand adjourned until the second day; and if the judge shall fail to attend on the second day, the business shall stand adjourned until the third day; and if the judge does not attend before the hour of three o'clock in the evening of the third day, it shall be the duty of the sheriff to adjourn all suits, causes, and prosecutions therein depending, to the next succeeding term of the circuit court; and the clerk of such court shall enter on his docket a continuance of all such suits and causes, and shall bind over all witnesses on behalf of the state, to appear at the next term of the said court, unless previously bound over: *Provided*, That nothing herein contained shall be so construed as to prevent the parties from making up their pleadings on the appearance causes.

Ib. Sec. 8.
Judges to be commissioned by the governor, and reside in their respective circuits.

Judges shall alternate.

How.

§ 25. When the circuit judges shall have been elected, in manner prescribed by the constitution, they shall be commissioned by the governor, and shall hold the circuit courts at the times and places *designated and established by law;* and shall reside within the circuit to which they may be severally elected; and in case of the removal of any such judge out of the circuit to which he is elected, his office shall be vacated thereby: *Provided*, That nothing in this act contained, shall be so construed as to prevent the interchange of ridings by such judges in their several circuits, in the manner hereafter pointed out, that is to say: the judges holding the courts aforesaid, shall so alternate, that no one judge shall hold the courts of the same circuit for two courts in succession, unless called on to do so by the judge whose duty it may be to hold such circuit, on account of sickness, or other inability to attend.

Ib. Sec. 9.
Clerk may certify records of superior court, transferred to him.

§ 26. When the clerk of any circuit court shall give a certified copy of any decree, judgment, record, or proceeding, of any superior court of law and equity, heretofore existing, the papers and records of which may be delivered to him, pursuant to the directions of this act, the same faith and credit shall be given to such certified copy, as to a certified copy of any record or proceeding of the circuit court, to which such clerk may belong; and it shall be the duty of the clerks of said superior courts of law and equity, to transfer all the proceedings, suits, and causes, within the same, to the circuit courts of the respective counties, in which such superior courts have been holden.

Ib. Sec. 13.
Certain days to be set apart for trial of criminal causes.

§ 27. The judges of the circuit courts within their respective circuits, shall set apart a particular day, or particular days, of each term, for the trial of criminal causes; and all fines inflicted and forfeitures accruing in the several circuit courts, shall go to, and be applied to the use of the county in which they may be thus inflicted, or shall accrue.

§ 28. The records of the respective courts within this state, for each preceding day of every session, shall be read in open court on the morning of the succeeding day, except on the last day of the term, on which day they shall be signed by the judge presiding in said court.

Ib. Sec. 15.
Records to be read in open court, and signed by the judge.

§ 29. The clerks of the superior courts of each county, shall deliver over to the clerks of the circuit court of the same, all records, books, and papers, belonging to the office of clerks of the superior court, and the clerks of the said circuit courts respectively, shall keep the same in their care, in the same manner as the other records and papers of their respective offices.

1819—(10)
Sec. 5.
Records of the former superior courts, to be kept by the clerks of the circuit courts.

COUNTY COURT.

§ 1. There shall be elected by joint vote of both houses of the general assembly, one judge of the county court, *for each county in this state*, who shall hold his office [a]for the term of six years. The county courts so established and organized, and the judges thereof respectively shall be, and are hereby vested with all the powers and jurisdiction, and shall perform the duties, which now appertain to the county courts in the first section of this act mentioned,[1] and to the chief justice thereof, except in cases where it may be otherwise directed by this or any subsequent act:—Each judge shall, before entering on the duties of said office, before a justice of the peace, take and subscribe the following oath or affirmation, viz: "I, , do solemnly swear (or affirm) that I will impartially and diligently, and without being influenced by fear, favor, or affection, faithfully execute the office of judge of the county court of county, to the best of my skill and ability, so long as I continue to hold the same;" and shall also take the other oaths required of public officers of this state, (which oaths by him so subscribed, he shall cause to be filed in the clerk's office of said court;) and shall enter into bond with good and sufficient security, to be approved of, and for such sum as may be directed by the judge of the circuit court, not less than five thousand dollars, payable to the governor for the time being, and his successors in office, conditioned for the faithful performance of the duties assigned him; which bond shall be filed in the office of the secretary of state, subject to be sued on by any person or persons, for any injury, waste, or damage sustained in any estate, in consequence of any neglect or omission of taking good and sufficient security from guardians, executors, or administrators.[2]

1821—(4)
Sec. 2.
Judges.
[a *Amendment to constitution,* 1830.]
Powers and duties of court.
Judges' oaths.
Bond,
to be filed in secretary of state's office.

§ 2. The clerks of the inferior courts shall be clerks of the said county courts respectively, and shall duly enter all orders and decrees made by their respective courts, or the judge thereof; issue all citations and other process which may be necessary, in proceedings before

Ib. Sec. 4.
Clerk's duty and fees.

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[1] The county court composed of five associate justices, to be elected by the legislature, by act of December 14, 1819, which succeeded to the powers and duties of the county and orphans' court, held by five justices, appointed and commissioned by the governor, pursuant to the act of February, 1807, Sec. 11. The five justices were required to elect one of their own number to preside, who was to be styled "Chief Justice," Sec. 40.

[2] The judge's bond, before being transmitted to the secretary of state, must be recorded in the office of the clerk of the circuit court. See "County Officers,"—§ 16.

said courts, and the judges thereof respectively; they shall have custody of the records and papers of the orphans' and county courts heretofore established in their respective counties, shall perform the several duties now appertaining to the office of clerk of the county court, and be entitled to the fees now allowed therefor.

Ib. Sec. 20. Bonds given to former judge, to inure to present judge.

§ 3. All bonds and recognizances, which may have been given, or made payable to the justices of any county court, or orphans' court, or to the chief justice of such courts, heretofore established by the laws of the Mississippi Territory, or of the Alabama Territory, or of this state, shall inure and be payable to the judge of the county court, of such county, and his successors in office, for the use of the county; and suits may be prosecuted, and judgments recovered thereon, in the name of such judge, or any of his successors, against all or any one, or more of the obligors to any such bond.

Ib. Sec. 23. Appeals and writs of error may lie.

§ 4. From any judgment or order final, whether in vacation or term time, an appeal or writ of error, shall lie to the circuit (1) or supreme court, in the same manner as upon judgments of the circuit courts.

1807—(20) *Sec.* 17. General civil jurisdiction of the county courts.

§ 5. The justices of the county courts during their terms shall, as justices of the county courts of their respective counties, have jurisdiction, and may take cognizance of all actions of a civil nature, in their respective counties, wherein the value of the matter in controversy shall not exeeed one thousand dollars, excepting however, real actions, actions of *ejectment* and *trespass quare clausum fregit.*

1812—(1) *Sec.* 5. Appeals from justices of the peace.

§ 6. The county courts shall not take cognizance of any suit or demand, where the matter in controversy is cognizable before a justice of the peace, except by appeal from such justice, or by *certiorari.*

1819—(6) *Sec.* 28. Concurrent jurisdiction in debt, assumpsit, case, &c. [a 1822—(11) *Sec.* 4.]

§ 7. The said county courts shall, in addition to the jurisdiction heretofore given to the county court, and orphans' court, in the territorial government, have concurrent jurisdiction with the circuit court, in all actions of *debt*, *assumpsit*, [a]*case*, *covenant*, *trespass*, and *assault and battery.*

1822—(11) *Sec.* 7. May grant writs of certiorari and supersedeas.

§ 8. The judges of the county courts, within their respective counties, shall have full power, concurrent with the power of the judges of the circuit courts, to grant writs of *certiorari* and *supersedeas*, returnable to the county courts, under the same regulations now in force relative to granting the aforesaid writs by judges of the circuit courts: *Provided*, That nothing herein contained, shall be so construed, as to take away from the circuit courts, jurisdiction of the aforesaid writs, granted by the judges of the circuit courts respectively.

Ib. Sec. 13. Counsel elected judge, causes to be removed.

§ 9. If any person shall be appointed judge of any county court in this state, who was employed as counsel in any cause depending in said court, the said cause shall be removed to the circuit court of said county.

1831—(13) *Sec.* 1. Causes to be transferred to circuit court, when either party is related to the judge.

§ 10. If any suit shall be commenced, or be now pending, in any of the county courts of this state, where any of the parties thereto shall be related to the judge of said court, by affinity or consanguinity, it shall be lawful for the judge of said court, to order the cause to be transferred to the circuit court of the county in which such suit may have been commenced; and it shall be the duty of the clerk of the county court, in such case, to deliver all the papers in such cause, together with a certified copy of the order of transfer, to the clerk of the circuit court of said county.

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(1) Circuit court affirming judgment of county court on writ of error, may render such judgment as the county court should have rendered, unless the record show matter requiring a trial by jury. Lane *v.* T. and J. Kirkman, *Min. Rep.* 411.

Ib. Sec. 2. Cause so transferred to be placed on the trial docket.

§ 11. It shall be the duty of the clerk of the circuit court to which any cause may be transferred as aforesaid, to place the cause on the trial docket for the next succeeding term of said court; and from the time said papers may be so delivered to the clerk of any circuit court, it shall in all respects, stand in the same situation as if it had been regularly commenced in said court, and it shall be tried at the next succeeding term, unless continued for good cause, as in other cases.

1819—(6) *Sec.* 31. To observe the same rules of practice, as in the circuit court.

§ 12. The same rules of practice, methods, and proceedings, shall be had, kept, and observed, by the county courts, and the officers thereof, in granting, issuing, executing, and returning process, and awarding judgments on judicial attachments, and the like remedy, recovery, and relief against the sheriff and bail, as in like cases are provided by law, in suits depending, or to be commenced, in the circuit courts within this state.

Acts consolidated. 1821—(4) *Sec.* 1. &c.

Courts, when held.

§ 13. The county courts hereby established and organized, shall be held by the respective judges thereof twice a year in each county in the state; each session shall continue twelve judicial days, unless the business thereof be sooner completed, except as hereinafter specified; and said session shall commence as follows, to wit: *In the county of*

Autauga, on the second Monday in February and August.
Baldwin, on the third Monday in January and June.
Barbour, on the second Monday in February and August, and continue until the business is disposed of.
Benton, on the first Monday in May and October.
Bibb, on the second Monday in February and August.
Blount, on the third Monday in February and August.
Butler, on the second Monday in February and August.
Chambers, on the first Monday in June and November.
Clarke, on the second Monday in February and August.
Conecuh, on the first Monday in February, and third Monday in June.
Coosa, on the first Monday in June and November.
Covington, on the first Monday in February and August.
Dale, on the third Monday in June and December, and continue six judicial days.
Dallas, on the first Monday in February, and on the Wednesday after the first Monday in August, and continue six judicial days.
Fayette, on the third Monday in January and July.
Franklin, on the first Monday in June and December, and continue six judicial days.
Greene, on the fourth Monday in May, and second Monday in November, and continue six judicial days.
Henry, on the second Monday in June and December, and continue six judicial days.
Jackson, on the second Monday in February and August.
Jefferson, on the fourth Monday in February and August, and continue six judicial days.
Lauderdale, on the fourth Monday in January and July.
Lawrence, on the third Monday in January and July.
Limestone, on the second Monday in June and December.
Lowndes, on the second Monday in February and August.
Macon, on the first Monday in June and November.
Madison, on the third Monday in February and August.
Marengo, on the second Monday in February and August, and continue six judicial days.
Marion, on the fourth Monday in May and November, and continue six judicial days.

Mobile, on the second Monday in February and June.
Monroe, on the third Monday in January, and second Monday in July.
Montgomery, on the second Monday in May and November.
Morgan, on the third Monday in January and July.
Perry, on the Wednesday after the first Monday in February, and continue four judicial days: and on the fourth Monday in July, and continue twelve judicial days.
Pickens, on the second Monday in June and December, and continue six judicial days.
Pike, on the first Monday in June and November.
Randolph, on the third Monday in June and November.
Russell, on the first Monday in June and November.
Shelby, on the third Monday in February and August.
St. Clair, on the third Monday in January and June.
Sumpter, on the second Monday in January and July, and continue six judicial days.
Talladega, on the second Monday in June and November.
Tallapoosa, on the first Monday in June and November.
Tuscaloosa, on the third Monday in January and July, and continue until the business is disposed of.
Walker, on the fourth Monday in January and July.
Washington, on the third Monday in January and July.
Wilcox, on the fourth Monday in January and July.

1807—(20) *Sec.* 23. Unfinished business to be laid over.

§ 14. If the business of any of the said county courts cannot be completed, ended, and finished, *within the time limited for holding the sessions thereof*,[1] all such actions, causes, and matters, that shall be depending in said court, shall remain undetermined, and be laid over to the next succeeding term.

Ib. Sec. 24. No discontinuance of causes, for failure of court; but business to stand continued to succeeding term.

§ 15. None of the said county courts, nor any process in any of them depending, shall be discontinued for or by reason of the justices' failing to hold court upon the day by law appointed, or of any alteration of any of the days appointed for holding the said courts; but in every such case, all such process, matters, and things depending, shall stand continued, and all appearances upon returns of process, shall be made to the next succeeding term in course, in the same manner as if such succeeding term had been the same term to which such process had stood continued; or such returns, or appearances, had been made; and all bonds and obligations for appearances, and all returns shall be of the same force and validity for the appearance of any person or persons, at such succeeding term; and all summonses for witnesses as effectual, as if the next succeeding term had been expressly mentioned therein.

JURISDICTION AND DUTIES, WITH RESPECT TO CONVEYANCES, WILLS, INTESTATES' ESTATES, INFANTS, LUNATICS, &C.

1806—(1) *Sec.* 1. County court to hold an orphans' court. To take probate of wills, &c.

§ 16. The justices of the county court of each county in this territory shall, during the time of their holding such county court, hold and keep a court of record, to be styled and called "The Orphans' Court of the said county," for taking the probate of wills, and granting letters of administration on the estates of persons deceased, being inhabitants of, or resident in the same county, at the time of their decease, for appointing guardians to minors, idiots, lunatics, and persons *non compos mentis*, for examining and allowing the accounts of executors, administrators, or guardians; with full jurisdiction of all testamentary and other matters pertaining to an orphan's court or court of probate, in their respective counties.

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[1] Originally, "within six days from the commencement of the court." The sessions of all the courts were then restricted to six days. It is altered to correspond with the enlargement of the terms.

§ 17. The granting of letters of administration, of the estate of any intestate, and the hearing and determining the right of the same, shall pertain to the orphans' court of the county, in which the intestate had, at the time of his or her death, a mansion house, or known place of residence. And if he or she shall have no such known place of residence, then to the orphans' court of the county where the intestate shall die, or that wherein his or her estate, or the greater part thereof shall be; and the court taking the probate of any will, or granting letters of administration, and the executors or administrators thereby authorized, shall have the same jurisdiction, power, and authority, in and over the decedent's estate, in any part of this territory, as if it were situate in the proper county of such orphans' court.

Ib. Sec. 19. Granting administration to appertain to the court of the county where decedent had a residence, or where he died, or his estate lies.

§ 18. The chief justice shall cause to be kept by the register of the orphans' court, a docket in which shall be entered, in vacation, the names of all accountants, applicants for the probate of wills, or for letters of administration or guardianship, in the order as to priority of time such accounts were exhibited, or applications were made, to the end that such accounts may be allowed, and applications heard and determined at the next term of said court; and shall moreover direct all necessary notices and citations to those principally interested, if in this territory, to appear and show cause at the next term, why such application should not be granted: *Provided,* That wills may be proved, and letters of administration and guardianship may be granted, where no application has been made to the chief justice in vacation.

Ib. Sec. 22. Register to keep a docket of applications for probate of wills, &c.

§ 19. The clerk of the county court of each county shall, by virtue of his office, be register of the orphans' court of the same county, and shall take and subscribe an oath or affirmation in open court, for the faithful discharge of the duties of his office. And it shall be the duty of said register to keep and preserve all records, files, papers, and proceedings of the said court, as an orphans' court, separate and distinct from the records, files, and proceedings of the county court: to record all last wills and testaments, duly proved and approved; all accounts finally allowed; all inventories and appraisements duly made and sworn to; to issue all citations, subpœnas, and other process, as issue of course, and all such as are directed by the court in term time, or chief justice in vacation; and to do and perform all those things that appertain to the office of a register, or clerk, of said orphans' court. And the said register's office shall be under the direction of the court in term time and of the said chief justice in vacation.

Ib. Sec. 23. County clerk to be clerk ex-officio, but to keep a separate docket. His duties.

§ 20. Letters testamentary, letters of administration, and letters of guardianship shall be tested in the name of the said chief justice, and signed and issued by the register. And bonds given by executors, (in such cases as they are directed to give bond,) by administrators, and guardians, and all other bonds taken in said court, shall be made payable to said chief justice, and his successors in office.

Ib. Sec. 25. Letters and process from orphans' court, how tested.

§ 21. The county courts shall have full power and authority to take the probate of wills, and also conveyances of real and other estates, and to order the same to be recorded in proper books, to be kept for that purpose.

1807—(20) *Sec.* 13. May take and record conveyances of estates.

Ib. Sec. 14. In testamentary cases, an appeal may lie to the circuit court.

§ 22. If any person claiming a right to execute any will, or to administer on the estate of an intestate, shall think himself injured by order of the court for letters testamentary, or of administration, he shall be entitled to an appeal to the superior court of the county or district where such order shall have been made, subject to the same regulations as in other cases of appeal; and such superior court is hereby declared to have cognizance thereof; and shall at their sitting next succeeding such appeal, determine the same, and upon such determination had, such court shall proceed to grant letters to the persons entitled to the same; he or she, (if on administration,) giving bond with sufficient security, for the faithful discharge of the trust; which bond and proceedings shall be transmitted by the clerk of the said superior court, to the office of the county court from whence the appeal issued, there to be entered and filed with the other testamentary transactions in such office. And for the better preservation of wills and other papers, relative to the estates of deceased persons, ***Be it*** *enacted*, That all original wills, inventories, and accounts of executors and administrators shall remain in the clerk's office, among the records of the respective counties where the same shall be proved or exhibited; and to the said wills, inventories, and accounts, any person may have free access, except for the time they shall or may be removed before any other court, upon the determination of any controversy.

Wills, inventories, &c. to remain in the clerk's office.

Ib. Sec. 15. To have care of orphans and their estates.

§ 23. The justices of the several county courts in this territory, shall have authority, within their respective jurisdictions, from time to time, to take cognizance of all matters concerning orphans and their estates, and to appoint guardians in such cases where to them it shall appear necessary, and shall take good security of all guardians by them to be appointed, for the faithful discharge of the trust committed to them.

1819—(6) *Sec.* 34. To appoint guardians to idiots and lunatics.

§ 24. It shall be lawful for every county court within this state, where any idiots or lunatics shall be within the jurisdiction thereof, to appoint them, or either of them, a guardian, taking bond with approved security, for the faithful administration of the trust reposed in such guardian, in the same manner as bonds are taken from the guardians of orphans; and such guardian, when so appointed, shall continue during the pleasure of the court, and shall have the same power, to all intents, constructions, and purposes, and shall be subject to the same rules, orders, and restrictions, as guardians of orphans are: such lunacy to be ascertained by the inquisition of a jury, by virtue of a writ to be issued by the court, to the sheriff of the county for that purpose.

1821—(4) *Sec.* 11. Inquisitions, as to idiots, lunatics, &c.

§ 25. Inquisitions as to idiots, lunatics, or persons *non compos mentis*, may be ordered in vacation, or in open court, and made returnable as process of citation. On sufficient cause shown, the judge may order any such inquisition to be had before him: in other respects, the same proceedings shall be had thereon as heretofore.[1]

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[1] The act of February 10th, 1806, Sec. 51, contains the following provisions with respect to inquisitions of lunacy: "The orphans' court are hereby authorized, &c. by writ, to direct the sheriff of the county to summon twelve good, discreet, and lawful men of the county, and neighborhood of the residence of such person, (i. e. *the person supposed to be lunatic, non compos mentis, &c.*) to make inquisition thereof, on oath; and if the person said to be an idiot, lunatic, or non compos mentis, shall be adjudged by such inquisition, (or the major part of them,) to be incapable of taking care of him or herself, and they shall certify the same under their hands and seals, to the orphans' court, the court shall assign some suitable person to be the guardian," &c.

§ 26. The judge of each county court, shall have power within the county, *either in open court or in vacation*, to take the probate of wills, grant and repeal letters testamentary and letters of administration, appoint and displace guardians of infants, and idiots, lunatics, and persons *non compos mentis*, and to make all necessary orders for the issuing process and other purposes, within his jurisdiction, according to such regulations as are, or may be established by law in such cases: each judge shall, by order made in open court, appoint certain days, [a]*not less than one day in every period of each month*, for the return of process in such cases as he is competent to hear and determine in vacation, and on each return day, shall attend at the court-house, or place appointed for holding the county court, to hear and determine such cases. All process issued in such cases shall be made returnable to the next return day, or if the party applying therefor shall so require, to some other return day, or stated session. If on any return day, the business then required to be acted on, shall not be completed, the judge shall attend on the succeeding day, and from day to day, until the business shall be completed: but for special cause he may adjourn any part of the business to such other day as he may appoint. The clerk of the court and sheriff shall attend the sittings of the judge on return days, as well as at the stated sessions.

Ib. Sec. 5. Judge's powers extended to vacation.

[a 1821—(24) *Sec.* 4.] Special sessions each month.

To sit from day to day.

Clerk and sheriff to attend the special courts.

§ 27. In all cases where it may be necessary to have any matter depending before any of said courts, or the judge thereof, on any return day, tried by a jury, the sheriff, by order of the judge, shall forthwith summon and empannel a jury.

Ib. Sec. 6. Jury may be empannelled.

§ 28. Where any person may have died, having no known place of residence within any county of this state, his or her will may be proved, and letters testamentary, or of administration thereon granted, in the county where the lands devised, or any part thereof lie; or the will may be proved, and letters testamentary granted, or administration may be granted, in any county where the goods and chattels, and debtors, or any part thereof, of such testator, or intestate, may be.

Ib. Sec. 7. Probate of wills, and letters of administration where granted when deceased had no known residence.

§ 29. On application for the probate of any will, or for letters of administration, the clerk shall issue a citation requiring the sheriff to summon the widow or next of kin of the deceased, to appear at some return day in said process named, (or appear at the next stated session,) and show if they have anything to allege against such application; and subpœnas for such witnesses as the applicant may name on the return of such process, executed on the proper parties a reasonable time before the return day thereof, (allowing one day for every twenty miles he, she, or they, may reside from the place of holding the court,) or on satisfactory proof that the deceased has no widow or kindred resident in the state, the application may be heard and determined: the court at any stated session, may hear and determine such applications, though no citations may have been executed or issued, on proof of reasonable notice thereof, as aforesaid, or on proof that the deceased has no widow or kindred resident in the state.

Ib. Sec. 8. Notice shall be given to the widow or next of kin, on application for probate of will, or letters of administration.

§ 30. When the validity of any will shall be contested, or doubts may arise as to its validity, or as to any fact which, in the opinion of the judge, it may be necessary to have ascertained by the verdict of a jury, before awarding any order, judgment, or decree, such judge at any stated session, or on any sitting held in vacation, according to the provisions of this act, may forthwith cause a jury to be summoned and empannelled, to try such issues, or inquire of such facts as, under his direction, shall be submitted to their decision, and shall cause them to be sworn, in such form as the case may require.

Ib. Sec. 9. Jury may be empannelled to try the validity of a will.

Ib. Sec. 10. Citations to produce wills.

§ 31. If any of said judges shall be informed that any will, whereof he is competent to take the probate, is in possession of any person, such judge may order a citation to issue, returnable as in other cases, requiring the person so charged, and all others who may have possession of such will, to produce the same before him, at or before the return day of such process; and on its being duly ascertained by proof, that any person or persons on whom such process has been executed, conceals, or improperly delays to produce such will, such judge may commit him, her, or them to jail, to remain in custody until the will shall be produced, and may make such other orders as may seem necessary in the case.

Ib. Sec. 24. Evidence of settlement with executors, &c. to be preserved. To be evidence in suits.

§ 32. The documents and evidence of all settlements made with executors, administrators, and guardians, shall be carefully preserved by the clerk of said county court, and the settlement entered of record; which evidence, vouchers, documents, and settlement, shall be good evidence in any suit for or against such executor, administrator or guardian, and shall not be impeached, except for fraud in obtaining the same.

1822—(3) *Sec.* 1. Judges to give the notice required by law of executors.

§ 33. Hereafter, it shall be the duty of the judges of the county courts, in their respective counties, to give the notice now required by law to be given by executors, administrators, or guardians, of the term of the said court, at which any executor, administrator, or guardian may be required by said judge to present for allowance, his settlement or account current, made as prescribed by law in vacation.[1]

Ib. Sec. 2. To render judgment for printer's fees.

§ 34. The said judge is hereby authorized to render judgment against any executor, administrator, or guardian, for whom he is required by this act to give notice, in favor of the printer, for any sum which said judge may think reasonable for publication.

1826—(25) *Sec.* 1. Clerk may administer the necessary oaths to executors and administrators.

§ 35. It shall be lawful for clerks of the respective county courts to administer the necessary oaths to all executors and administrators, upon their obtaining letters testamentary or of administration, and all or any oath or oaths respecting their several duties, which may or can be administered out of term time, by a justice of the peace, or by said county courts, acting in pursuance of their several jurisdictions.

Ib. Sec. 2. False swearing in such cases, perjury.

§ 36. Any person or persons swearing falsely, when an oath is administered in pursuance of the authority given to such clerk in the preceding section of this act, shall be liable to all the pains and penalties inflicted on those guilty of perjury, in like manner as if said oath or oaths had been, or were administered in a court of record.

1830—(11) *Sec.* 1. Final settlements to have force of judgments, and executions may issue thereon.

§ 37. All decrees made by the orphans' court on final settlements on the accounts of executors, administrators, and guardians, shall have the force and effect of judgments at law, and executions may issue thereon, for the collection of the several distributive amounts against such executor, administrator, or guardian.

Ib. Sec. 2. On decree of distribution, each distributee may have execution for his share.

§ 38. When distribution of real or personal estate is decreed by the said court, each distributee, heir, or devisee, may and shall have his or her writ of execution, or attachment, one or both in the case of personal estate; and in the case of real estate, a writ of *habere facias possessionem*, against the executor, administrator, or guardian; and the sheriff to whom such writ shall be directed, shall execute the same according to the commands thereof.

1832—(39) *Sec.* 1. County courts on final settlement. to assess and insert the amount of distribution.

§ 39. The county courts on final settlements of executors, administrators and guardians, shall assess and insert in their decree, the amount of their distributive share.

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[1] See "Executors and Administrators,"—§ 27.

§ 40. Whenever any execution shall have issued, or any decree made by the orphans' court, and final settlement of the accounts of executors, administrators or guardians, and is returned by the sheriff "no property found," generally, or as to a part thereof, execution may and shall forthwith issue against the securities of such executor, administrator or guardians.

Ib. Sec. 2. Remedy against executors, administrators, and guardians.

§ 41. In all settlements hereafter to be made by executors, administrators or guardians with the orphan's court, in which the judge of said court may have been employed as counsel, or may be otherwise interested in such settlement, it shall be the duty of said judge, to give immediate information of the fact to one of the judges of the supreme or circuit courts, who shall thereupon issue a commission, to three persons of the proper county, directing and empowering them to proceed to make said settlement under the rules and regulations now prescribed by law.

1833—(27) *Sec.* 1. Judges of supreme or circuit courts may issue commissions for settlement of estates, when judge of county court is interested.

§ 42. Such settlement when made as aforesaid, shall be duly recorded by the clerk of the county court, and shall have all the force and effect of settlements made by the judge of said orphans' court.

Ib. Sec. 2. Settlements to be recorded.

§ 43. In case of the neglect for an unreasonable time, or the refusal of said judge of the orphans' court, to give the notification required in the first section of this act, the judge of the supreme or circuit court shall on the application of the executor, administrator, or guardian, or other person interested in said settlement, and on satisfactory proof of such neglect or refusal, on the part of the judge of the orphans' court, direct said commission in the same manner as on information of said judge.

Ib. Sec. 3. Where judge of county court refuses to give notice.

§ 44. The county and orphans' court respectively, shall have full power and authority to issue writs of attachment, or other writs necessary to enforce their orders, judgments, and decrees.

1830—(11) *Sec.* 3. County court may enforce its decree by attachment.

JUDICIAL PROCEEDINGS—Errors and Appeals.

§ 1. When any appeal shall be granted by any court, or any writ of error be directed to the same, the clerk of such court shall immediately make up a full and perfect record of all the proceedings in such cause, and shall, on the application of either of the parties, give an attested copy of such record, with a taxation of all costs which have accrued, to the appellant or plaintiff in error, if required; and shall endorse on such copy the day or days on which the same may have been demanded, and the day on which it shall be delivered, and sign his name as clerk thereto: and if by reason of the delay of any clerk, any transcript shall not be filed in time, or the record is so erroneously or incorrectly made up, that the superior or supreme court cannot proceed thereon; such clerk shall, in either of the said cases, upon trial and conviction, be adjudged guilty of a misbehavior in office, and shall forfeit and pay to the person entitled to such attested copy, the sum of two hundred dollars, to be recovered by action of debt, in any court having cognizance thereof, and shall be further liable to an action on the case, for all damages which such person may sustain for want of such copy: *Provided always*, That if the judge or judges of the superior or supreme court, should be of opinion that there appears to be sufficient matter of substance in the transcript of the record and proceedings, on any appeal or writ of error, to enable them to proceed thereon, the same shall not be dismissed for want of form; anything herein contained to the contrary notwithstanding.

1807—(19) *Sec.* 39. Duty of the clerk on appeals and writs of error.

Penalty for neglect.

Appeal not to be dismissed for mere informality in the transcript.

Ib. Sec. 40. Clerk of superior court shall receipt for record, and place the cause on the docket.

§ 2. The clerk of any superior court, upon receiving a transcript of the record and proceedings in any suit, on which an appeal shall be made, or writ of error allowed, shall give a receipt to the person delivering the same, and shall immediately endorse thereon the day on which it shall be delivered; and if he receive it fifteen days before the commencement of the term of the next superior court of which he is clerk, he shall enter it upon the docket of causes for trial, and deliver to the parties such summonses for their witnesses as they may require:—But if such transcript be not delivered to such clerk before fifteen days previous to the next succeeding term, then the clerk shall enter the cause on the reference docket of such court.[1] And if the clerk of any superior court shall refuse, neglect, or omit to do any of the duties which he is hereby required to perform, such clerk shall, upon trial and conviction, be deemed guilty of a misbehavior in office, and shall forfeit and pay to the appellant or plaintiff in error two hundred dollars, to be recovered by action of debt, in any court having cognizance thereof, and be further liable to an action on the case, for all the damages which such appellant or plaintiff in error may sustain by reason of such refusal, neglect, or omission.

Penalty for refusal or neglect.

Ib. Sec. 41. Execution may be stayed in certain cases, in order to obtain writ of error.

§ 3. When in any county or circuit court, judgment upon a verdict in a civil action shall be entered, execution may, on the motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as they may judge proper, be stayed thirty days from the time of entering judgment, to give time to the party making such motion, to apply for a writ of error.

Ib. Sec. 42. Supreme court may establish rules concerning writs of error.

§ 4. The supreme court may ordain and establish all necessary rules, respecting the granting, issuing, returning, and hearing of writs of error.

1814—(4) *Sec.* 6. Bill of exceptions to decision of the judge to be allowed, and form part of the record.

§ 5. If, in the trial of any cause, either the plaintiff or defendant shall think himself aggrieved by the direction or decision of any judge, of any of the courts in this territory, the party so considering himself aggrieved, may in person, or by his counsel, tender to the judge giving such direction or decision, a bill of exceptions to his opinion, stating the points wherein he is supposed to err; and the said judge shall be bound to sign and seal the same; and the said bill of exceptions so signed and sealed, shall be made and considered a part of the record in the cause; and in case the said judge shall refuse to sign and seal the said bill of exceptions, if the facts therein are truly stated, he shall be deemed guilty of a high misdemeanor in office: (1) [a]and in all cases in which the judge of any inferior court may fail or refuse to certify any exception taken on the trial of any cause, it shall be lawful for the supreme court to receive such evidence of the exception as may be satisfactory to it, and to try the said cause in the same manner as if the said exception had been certified by the judge who tried the said cause. (2)

[a 1826—(39) *Sec.* 3.] Judge failing to certify, supreme court may receive satisfactory evidence of the exception.

1820—(4) *Sec.* 3. Bond on granting writ of error.

§ 6. No judgment of the circuit court in this state shall be suspended, unless the party applying for the writ of error, shall execute in the clerk's office a bond with sufficient security ([b]to the adverse

[b 1814—(4) *Sec.* 5.]

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[1] The provisions of this section, as to the return of writs of error, have been modified, or rather repealed by later acts. See hereafter, § 13. See also, "Judiciary—County Court,"—§ 4.

(1) To be valid, a bill of exceptions must be claimed before verdict, and sealed as well as certified by the Judge. Powers *v.* Wright, *Min. Rep.* 66.—Exceptions not certified by the presiding judge, nor noted in writing at the trial, cannot be considered as on the record. Tombeckbe Bank *v.* Malone & Co., 1 *Stewt. Rep.* 269.

(2) But the exceptions must be established by proof within the trial term, and on notice to the opposite party. Perkins *v.* Harper, 2 *Stewt. Rep.* 477.

party) to be approved by the clerk, (1) conditioned for prosecuting the writ of error to effect, and to pay and satisfy the judgment which shall be rendered in the said cause by the supreme court. [a]And the said clerk shall send an attested copy of the bond to the said supreme court, with the transcript of the record: [b]and in case of dismission or discontinuance of the cause, the supreme court shall render judgment against the principal and security in the bond.

Condition.

[a 1814—(12) *Sec.* 2.]

[b 1815—(12) *Sec.* 3.]

Judgment against security on affirmance.

§ 7. If any clerk of the circuit [c]or county court, upon issuing any writ of error shall take security which shall be insufficient at the time of taking the same, he shall be liable to an action of trespass on the case, in favor of the party aggrieved: *Provided*, That nothing in this act contained shall be so construed as to subject any clerk to a recovery in the action aforesaid, for taking as security for any writ of error, any person who was generally reputed sufficient for the sum for which he became bound as security, at the time he was taken as security.

1822—(6) *Sec.* 1.

[c 1833—(18) *Sec.* 1.]

Clerk liable for taking insufficient security.

§ 8. Whenever a writ of error shall be filed in the clerk's office, of any of the superior courts of this territory, in any cause or matter finally determined in the said courts, and bond and security be given according to law, it shall operate as a *supersedeas*.

1816—(10) *Sec.* 2.

Writ of error and bond to be a supersedeas.

§ 9. Whenever a writ of error shall have issued from the clerk's office of any of the superior courts of this territory, it shall be the duty of the clerk of the court from which it shall have issued, to give the defendant in error, or to his attorney, on application, a certificate stating that a writ of error has issued.

1818—(3) *Sec.* 1.

Clerk to give certificate of issuance of writ of error.

§ 10. Either party may appeal from any final judgment or decree of any circuit court during the term at which the judgment or decree was rendered, to the supreme court, upon entering into bond with security to be approved of by the court, in double the amount of the debt or damages in such his, or their suit, for prosecuting the same with effect, or performing the judgment, sentence, or decree which the supreme court shall pass or make thereon, in case the appellant shall have the cause decided against him; (2) and the appellant shall file a transcript of the record with the clerk of the supreme court, on or before the third day of the first term of said supreme court after the appeal was granted, and on failure thereof the appeal shall be dismissed with costs and damages, upon the appellee's producing a certificate from the clerk of the circuit court of the amount of the judgment or decree, and that bond had been executed according to the order of the court granting the appeal: *Provided*, That for good cause shown, the appeal may be reinstated any time during the term, upon payment of costs.

1819—(6) *Sec.* 16.

Appeals to lie from circuit to supreme court.

Appellant to file transcript of record by third day of the term, or cause dismissed.

Cause may be reinstated.

§ 11. Writs of error shall lie from the court of errors and appeals, to the respective circuit courts throughout the state; and it shall be the duty of the judges, or any one of them, on application, either in vacation or term time, to grant such writ of error,[1] and to take good and sufficient security from the party demanding the same,—that the said party shall prosecute his writ to effect, and answer all damages and costs, if he fails to make his plea good.

Ib. Sec. 20.

Writs of error to lie from circuit to supreme court.

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[1] Now required to be issued by the clerks. See § 13.

(1) Judgment may be superseded by the bond, with security, of any one of several parties to a judgment; and one may sue out a writ of error in the name of all. Webster *v.* Yancy et al., *Min. Rep.* 183.

(2) If the penalty of the bond is blank (*or variant from the statute*) the appeal must be dismissed. Henry *v.* Gamble, *Min. Rep.* 6.—An *appeal* will not lie to the supreme court in a criminal case. Humphrey *v.* The State, *ib.* 64.

Ib. Sec. 21. Supreme court to pass such judgment as circuit court should have passed, or remand cause.

§ 12. When any judgment, decision, or decree of the circuit court shall be reversed or affirmed in the court of errors and appeals, it shall be the duty of said court, to pass such judgment, decision, or decree as the circuit court should have passed, except where the damages to be assessed, or matter to be decreed, are uncertain; in which case the said court shall remand the same for final hearing.

1820—(4) *Sec.* 1. Writ of error and citation to be issued by clerk of circuit court.

Transcript of record and citation to be delivered to party applying for writ.

[a 1816—(10) *Sec.* 1.]

If not filed on or before third day of the term, cause to be dismissed on motion.

[b 1818—(3) *Sec.* 2, & 1816—(10) *Sec.* 1.]

But may be reinstated.

§ 13. It shall be the duty of the clerks of the circuit courts in this state respectively, on the application of the party against whom any final judgment shall have been rendered, or on the application of the attorney of the said party, to issue a writ of error returnable to the first day of the next term of the supreme court, and also to issue a citation which shall be served upon the opposite party or his attorney, by the proper officer of the court, at least ten days previous to the commencement of the next term of the supreme court, which citation shall be returned to the office of the clerk from which it issued, whenever served, whether in vacation or term time, and shall, together with a transcript of the record in the cause, be delivered to the party applying for the writ of error, or his, her, or their attorney, to be by him, her, or them returned to the first day of the next term of the supreme court; and in case the transcript of the record in the cause below, *and the assignment of errors*[a] should not be delivered to the clerk of the supreme court, on or before the third day of the term to which the writ of error shall be returnable, it shall be lawful for the supreme court, at that term, or at any term thereafter, on motion of the defendant in error or his attorney, and on producing a copy of the citation served upon the defendant, certified by the sheriff, or on producing a certificate from the clerk of the court from which the writ of error issued, showing the time at which it issued, and amount for which judgment was rendered, and at what term of the court below, to affirm the judgment of the circuit court with costs of suit; [b]unless the plaintiff in error, or some other person, shall make affidavit that the transcript of the record could not be procured from the clerk of the court below: but the cause may be reinstated on the docket at any time during the term to which the writ shall be made returnable, upon showing sufficient cause to the said supreme court.

Ib. Sec. 2. Clerk of supreme court to certify judgment to clerk of inferior court, with bill of costs. Clerk of inferior court shall issue execution, and transmit to the supreme court, its costs, when collected.

§ 14. When a final judgment shall be rendered by the supreme court in any cause, it shall be the duty of the clerk of the supreme court to certify the judgment of the said court to the clerk of the court from which the cause came, together with a bill of the costs accruing in the supreme court; and it shall be the duty of the clerk of the court below, immediately on the receipt of the said certificate, to issue execution, if judgment be rendered for the plaintiff in the original cause, for all the money, together with all the costs of the suit in the court below, and supreme court, which by the judgment of the supreme court may be due from the defendant to the plaintiff, or to issue such an execution as may be directed by the supreme court; but if judgment be rendered for the defendant in the original cause, then against the plaintiff in the original cause, for all the said costs of suit, or such other execution as may be directed by the supreme court, returnable to the next term of the court below. And it shall be the duty of the clerk of the court below, to transmit to the clerk of the supreme court, upon the return of the said execution satisfied, all the costs which may have accrued in the same cause in the supreme court.[1]

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[1] The supreme court is empowered to give judgment and award execution for its own costs. See § 22.

§ 15. It shall be the duty of the supreme court to decide all the causes which may be returned to the said court at the return term thereof, unless for good cause the same shall be continued; and in all cases decided in the supreme court, the successful party shall be entitled to the same fee which is now allowed in chancery causes in the circuit court.

Ib. Sec. 4. Supreme court to decide at return term. Tax fee.

§ 16. It shall not hereafter be lawful for any circuit court to refer to the supreme court any question of law, except such as may be novel and difficult, and arise in a criminal case.

Ib. Sec. 5. Novel questions in criminal cases only, to be referred.

§ 17. A writ of error may issue to reverse any final judgment in the circuit court, at any time within three years after the rendition of the judgment, and not afterward.

Ib. Sec. 7. Writ of error within three years.

§ 18. It shall be lawful for any judge of the supreme court, who shall not have given an opinion in the case below, to sit in the trial of the said cause in the supreme court.

Ib. Sec. 10. What judges may sit in supreme court.

§ 19. In case the supreme court of errors and appeals shall affirm entirely any judgment or decree brought before them, the plaintiff in error, if he be the defendant below, shall pay to the defendant in error, ten per centum damages on the amount due [a]with lawful interest from the time of rendering the original judgment or decree, besides the costs of the original suit and writ of error.

1814—(4) *Sec.* 5. Damages, interest and cost, on affirmance. [a 1811—(13) *Sec.* 1.]

§ 20. Whenever the judgment of a circuit court shall, on appeal or writ of error to the supreme court, be affirmed, ten per cent. damages shall be allowed, and not more: *Provided*, That no damages shall be allowed in any cause in the supreme court, unless the judgment of the court below shall have been suspended. (1)

1820—(4) *Sec.* 11. Damages 10 per cent., but not to be allowed unless judgment was suspended.

§ 21. In causes wherein the judgments have been affirmed or reversed by the supreme court, and in which the costs incurred in that court have not been collected, the clerk of the said supreme court may issue the proper writs of execution, in the names of the successful parties, against the parties respectively subjected to the payment of such costs, returnable to the succeeding term thereof.

1822—(16) *Sec.* 1. Clerk of supreme court may issue execution for costs not collected.

§ 22. When judgment of an inferior court in any cause shall be affirmed or reversed by the supreme court, the said supreme court may give judgment and award execution against the unsuccessful party for the costs of such cause, incurred in the said supreme court: and it shall be the duty of the sheriff or other officer to whom such writ of execution shall be directed, to levy or execute, and make return thereof to the said supreme court, on or before the first day of the return term therein named, and render to the said clerk the moneys collected by him, according to the exigency of such writ.

Ib. Sec. 2. May give judgment and award execution for costs. Sheriff to levy, and make return.

§ 23. If such sheriff or officer fail so to return such writ of execution, or to pay the moneys by him made as aforesaid, the clerk of the supreme court may, in the name of the successful party in the cause, upon giving to such sheriff or officer, or to such sheriff and his securities, ten days' previous notice, and upon proof of such notice, move for at the next term of the circuit court of the county in which such sheriff or officer resides, and obtain judgment and execution against such sheriff or officer, or such sheriff and his securities so notified, for the amount of the writ of execution not returned as aforesaid, or the deficit of the moneys made and not rendered.

Ib. Sec. 3. Sheriff not returning execution may be moved against, by the clerk.

§ 24. If any sheriff or coroner in this state shall fail or refuse to return any execution issued from the supreme court as aforesaid, and

Ib. Sec. 4. Sheriff or coroner failing to return execution, liable to the motion of the party aggrieved.

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(1) Ten per cent. damages allowed under this act on affirmance of judgment, whether the suit was founded on a liquidated or an unliquidated demand. Heart *v.* Judson, *Min. Rep.* 135.

placed in his hands, to the return term of said court named in said execution, it shall be lawful for the party at whose instance said execution issued from the supreme court, to obtain judgment against said sheriff or coroner for the amount of money named in said execution, and costs of the motion: *Provided always*, That the certificate of the postmaster living at the seat of justice of the county of which he is sheriff or coroner, or the nearest one thereto, that said sheriff or coroner has placed in his office, sealed up in his presence, and directed to the clerk of the supreme court, any execution, and the amount of money collected thereon, which has been placed in his hands, shall be sufficient evidence on the part of said sheriff or coroner, to prevent judgment from being obtained against him and his securities as aforesaid.

Costs collected may be transmitted by mail, and postmaster's certificate of deposit, a bar to the motion.

1827—(34) *Sec.* 1.

On execution returned, "no property found," clerk may issue execution against the plaintiff for the costs occasioned by him.

§ 25. The clerk of the supreme court is hereby authorized, whenever any sheriff or coroner shall return on an execution, directed to them or either of them, that the defendant or defendants in said execution, or either of them, have no property in his county out of which he can make the amount of costs due on said execution, forthwith to issue execution against the plaintiff or plaintiffs in said execution, for all costs due on said execution, created by the plaintiff or plaintiffs in obtaining his judgment and execution; and no costs created by any defendant or defendants on the part of him or them, shall be taxed or collected in said execution: *Provided*, That an execution which may be returned "no property found," shall have issued to the county from which the case was brought into said court, before an execution under this act shall issue against the plaintiff or plaintiffs.

1826—(39) *Sec.* 1.

Judgment in supreme court to be entered against security, and judgment certified to clerk of inferior court. Clerk of inferior court to issue execution agreeably to the certificate.

§ 26. In all cases in which the judgment, sentence, or decree of any inferior court, shall be affirmed in the supreme court, it shall be the duty of said supreme court to render judgment against the security or securities in the bond executed on obtaining the appeal or writ of error, in the same manner and for the same sum for which judgment shall be rendered against the plaintiff or plaintiffs, complainant or complainants, in said supreme court; and it shall be the duty of the clerk of said supreme court, to certify the judgment thereof to the court from which the cause came, against both the principal and the surety or sureties; and it shall be the duty of the clerk of the court whose judgment or decree shall have been affirmed, immediately on the reception of the certificate, to issue execution returnable to the next term of the said court, against the person or persons against whom judgment shall have been rendered in the supreme court, and for the amount of said judgment, in pursuance of the certificate from the clerk of the supreme court.

1830—(2) *Sec.* 1.

Circuit courts may enter judgment final against securities, on appeals from the county courts.

§ 27. The same power and authority that is now vested in the supreme court to render judgment final against the security in bonds for the prosecution of appeals or writs of error to said court, is hereby vested in the circuit courts of this state, upon all bonds for the prosecution of appeals or writs of error from the county courts, to the said circuit courts.

1830—(22) *Sec.* 1.

Damages on appeals from county to circuit court, the same as in supreme court.

§ 28. The same percentage shall be assessed upon appeals and writs of error taken from the county to the circuit court, as is now assessed in the supreme court, upon appeals or writs of error taken from the several county or circuit courts to the supreme court.

NOTE.—For other provisions on the subject of errors, See next title, "Errors and Amendments."

JUDICIAL PROCEEDINGS AT COMMON LAW.

This title comprehends the following subdivisions, arranged alphabetically, viz:

1. Abatement of suits.
2. Appeals from Justices of the Peace.
3. Costs.
4. Detinue.
5. Docketing and Order of Causes.
6. Ejectment.
7. Errors and Amendments.
8. Joint Obligors and Partners.
9. Judgment and Inquiry of Damages.
10. Jurisdiction.
11. Limitation of actions.
12. Motions against officers of court.
13. Penal bonds.
14. Penalties.
15. Petition and Summons.
16. Pleading.
17. Process.
18. Real and possessory actions.
19. Scire facias and Notice.
20. Set-off and Tender.
21. Suits against the state.
22. Trial and Evidence.
23. Venue.

1. Abatement of Suits.

§ 1. When any suit shall be depending in any court in this territory, and either of the parties shall die before final judgment, the executor or administrator of such deceased, who was plaintiff, petitioner, or defendant, shall have full power, (in case the cause of action by law survive) to prosecute or defend such action until final judgment: and the defendant is hereby obliged to answer thereto accordingly. And the court before whom such cause may be depending, is hereby empowered and directed to hear and determine the same, and to render judgment for or against such executor or administrator, as the case may require: and if such executor or administrator, having been duly served with a *scire facias*, or citation, from the office of the clerk of the court, where such suit is depending, fifteen days before the meeting thereof, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit; and the executor or administrator, who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuation of the same until the next term, or time of holding the court.

1802—(2)
When cause of action survives, suit not to abate by the death of either party: but to inure to representative.

Executor of defendant failing to become a party when cited, judgment against the estate.

Executor entitled to one continuance.

§ 2. The action of trover shall survive for and against executors and administrators.

1811—(11) *Sec.* 19.
Action of trover to survive for and against executors and administrators.

§ 3. Where any person or persons shall institute any suit in the name of any other person or persons, for his or their own use and benefit, the death of such person or persons in whose name or names the suit or suits are instituted, shall not abate such suit; but the same shall progress and be tried in the same manner as though such suit was actually brought in the name of the person or persons, for whose use the same was instituted.

1812—(8) *Sec.* 4.
Suits for use, not abated by the death of the nominal plaintiff.

§ 4. Where there are two or more plaintiffs or defendants to any suit or suits, in any court in this state, and one or more of them die; if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

1824—(2) *Sec.* 1.
On the death of joint defendant or plaintiff, suit may be continued by the survivors.

1826—(16) *Sec.* 1. Executor or administrator may revive proceedings on writ of *ad quod damnum*,

§ 5. Where any person who may sue out a writ of *ad quod damnum*, may die before the termination of the proceedings on such writ, his or her executor or administrator may, on motion, revive the proceedings, and prosecute the same to a final termination.

Ib. Sec. 2. or action of trespass for injury to property.

§ 6. All actions of trespass *quare clausum fregit*, and actions of trespass to recover damages for injuries to personal property, may, if the plaintiff or plaintiffs die, be revived by his, her, or their representatives, in the same manner as actions on contracts.

1827—(28) *Sec.* 1. Suit of *feme sole* not abated by her marriage.

§ 7. No suit instituted by a *feme sole* shall abate by her intermarriage: provided, the person marrying such *feme sole* will make himself a party to such suit, which may be done by motion to the court.

Ib. Sec. 2. *Sci. fa.* to husband of *feme sole* defendant.

§ 8. It may be lawful, when a *feme sole* defendant shall have intermarried, for the plaintiff to sue out a *scire facias* to her husband, and make him a party; and such suit shall not abate by reason of the marriage.

2. Appeals from Justices of the Peace.

1814—(7) *Sec.* 2. Appeal may be taken within five days after judgment. Appellant to give bond. Justice to summon witnesses. Interest and costs on affirmance of judgment.

§ 9. Any person aggrieved by the judgment of any justice of the peace, may, within five days thereafter, appeal to the next superior court sitting for his county, first giving to such justice, bond, with good security, in double the amount of such judgment, conditioned to prosecute such appeal with effect; and in case he be cast therein, to pay and satisfy the condemnation of the court. (1) And the justice before whom the cause was originally tried, shall issue subpœnas for all witnesses that the parties in such appeals may require. And in case the superior court affirms the judgment of the justice below, execution with interest and costs shall issue as in other cases.

1814—(17) *Sec.* 3. Sum not exceeding 20 dollars, to be tried without jury. Over 20 dolls. to be tried *de novo*, as other causes. Justice to send up statement and all papers.

§ 10. In all cases where the sum claimed does not exceed twenty dollars, the trial shall be by the court without the intervention of a jury; and in cases where the sum claimed exceeds twenty dollars, the court shall try such appeal *de novo*, as any other cause is tried, at the first term, on an issue (2) to be made up at or before the trial; and it shall be the duty of the justice of the peace trying such cause, to send up to the clerk of the superior court of his county, a statement of the case, with all the papers and the bond thereunto belonging, before the sitting of said superior court.

1816—(1) *Sec.* 4. On affirmance, judgment to be awarded against principal and security.

§ 11. Whenever any judgment rendered by any justice shall be removed into any superior court, by appeal, *certiorari*, or otherwise, and the judgment of the justice be affirmed, judgment shall be entered against the security as well as the principal, and execution may issue against both, or either of them.

(1) The appeal bond is sufficient evidence that judgment was rendered. McAlpin & Read *v.* Pool, *Min. Rep.* 316. After the term to which an appeal is returned, if the appellee has been notified or has appeared, it cannot be dismissed for the insufficiency of the appeal bond, unless a motion to dismiss is made at the return term and continued; and the court before dismissal should allow a good and sufficient bond to be given in open court, if the first was informally or inartificially taken by the justice without the neglect or default of the appellant. Jenkins *v.* Cauley, 1 *Stewt. Rep.* 61. Payne *v.* Martin, *ib.* 407. But if no bond be filed, a dismissal may be claimed at any time. Payne *v.* Martin, *ib.* 407.

(2) But if the defendant will not plead, and the instrument ascertains the amount due, judgment may be entered by default as in other cases. Bevin *v.* Goodman, *Min. Rep.* 90.

§ 12. In cases of appeals from judgments of justices of the peace, the court before whom such appeal shall be brought, shall proceed to try the same according to the justice and equity of the case, without regarding any defect in the warrant, capias, summons, or other proceedings of the justice of the peace, before whom the same was tried. (1)

1819—(6) *Sec.* 38. Appeals to be tried according to their merits, without regard to defects in the proceedings below.

§ 13. Appeals shall lie from justices of the peace to the respective circuit or county courts, under the same regulations as heretofore prescribed by law, for taking appeals to the circuit courts.

1822—(11) *Sec.* 5. Appeals may lie to the county courts.

§ 14. In all appeals taken by virtue of this act, from a justice of the peace, when it shall be made to appear to the court, that the appeal was taken merely for delay, the court shall award fifteen per cent. damages. (2)

Ib. Sec. 6. 15 per cent. damages on appeals taken merely for delay.

§ 15. Any cause removed by writ of *certiorari*, shall stand for trial at the first term of the court to which the same is returnable.

1823—(7) *Sec.* 1. Causes removed by *certiorari*, triable first term,

§ 16. The clerk of the court after issuing any writ of *certiorari*, is authorized and required, at the request of either of the parties, to issue subpœnas for witnesses, returnable to the same term to which the writ of *certiorari* is returnable.

Ib. Sec. 2. and clerk to issue subpœnas accordingly.

§ 17. Whenever the defendant in any cause that shall have been decided by a justice of the peace, shall appeal from the judgment of such justice, and the appellate court shall render judgment in favor of the plaintiff for a less sum than that recovered before such justice; such appellate court may enter judgment for the costs of such appeal, either against the plaintiff or the defendant according to the justice of the case: [a]but where the plaintiff or successful party shall appeal, and shall not recover more than was adjudged by the justice of the peace, in that case he shall pay all the costs.

1824—(18) *Sec.* 1. Judgment affirmed for less sum than recovered before justice, court may impose costs at its discretion.

[a 1822—(11) *Sec.* 8.] Costs on Plaintiff's appeal.

§ 18. No appeal shall be tried, unless it appear to the court that the appellee, his agent, or attorney, shall have had five days' notice of such appeal previous to the term at which the same shall be tried, or unless the return of *non est inventus* be made by the constable on the notice issued by the justice, and for want of such notice or return, the cause shall stand for trial at the ensuing term.

Ib. Sec. 2. Appellee to have notice of appeal, or cause to be continued.

§ 19. On all appeals taken, the justice shall issue a notice to the appellee of the same, which shall be served and returned by the constable, and sent up with the papers.

Ib. Sec. 3. Justice shall issue, and constable serve notice.

3. Costs.

§ 20. In all cases, in civil actions, the party in whose favor judgment shall be given, or in case of nonsuit, dismission, or discontinuance, the defendant, shall be entitled to full costs, except when it is or may be otherwise directed by law.

1807—(19) *Sec.* 35. Party prevailing entitled to costs.

§ 21. In all suits brought to recover damages for slander or trespass, assault and battery, the plaintiff shall not recover more costs than damages, if the damages do not exceed five dollars; unless the judge

1822—(1) *Sec.* 1. In certain cases plaintiff to recover no more costs than damages.

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(1) What defects in the proceedings of justices have been held to be cured by this statute, See Perry *v.* Brown, *Min. Rep.* 55. M'Grew *v.* Adams & Elliott, 2 *Stewt. Rep.* 502. It does not cure a misjoinder of parties. Smith & Hill *v.* Cobb, 1 *Stewt. Rep.* 62. On appeal, objection cannot be made to the return of the warrant, unless it has been made before the justice, and the court should permit the constable to amend his return. Needham *v.* Newsom, *Min. Rep.* 407.

(2) Damages not allowed on certiorari from justices' judgments. Hudnall & McCabe *v.* McCarta, *Min. Rep.* 402.

before whom the suit was tried, shall certify that more damages ought to have been awarded by the jury. (1)

1824—(16) *Sec.* 1. Plaintiff for whose use suit is brought, liable for costs.

§ 22. On all suits instituted in any court of record in this state, in the name of one or more persons for the use of another, and judgment thereon rendered against the plaintiff or plaintiffs for costs, it shall be lawful to enter up judgment and issue execution against the person or persons for whose use such suit or suits may be instituted.

1826—(24) *Sec.* 1. Party succeeding liable for his own costs, in case of other party's inability to pay, and execution may issue against him.

§ 23. The clerks of the several circuit and county courts, and the justices of the peace in the several counties in this state, are hereby authorized, whenever any sheriff, coroner, or constable shall return on an execution, directed to them or either of them, that the defendant in said execution has no property in his county, out of which he can make the amount of costs due on said execution, forthwith to issue execution against the plaintiff in said execution, for all costs due on said execution, created by the plaintiff in obtaining his judgment and execution; and no costs created by any defendant on the part of the defendant, shall be taxed or collected in said execution. (2)

1831—(10) *Sec.* 1. No county tax allowed on bank judgments, without a jury.

§ 24. Hereafter, no county tax on judgments rendered in favor of the Bank of the State of Alabama, without the intervention of a jury, either by the circuit or county court of Tuscaloosa county, shall be taxed in the bill of costs in said causes.

Security for Costs.

1807—(14) *Sec.* 9. Suits of non-residents to be dismissed, if security be not given for costs.

§ 25. Every action at common law, or suit in chancery, commenced in the name of any person residing out of this territory, shall be dismissed if security be not given with the clerk of the court from whence the process shall issue, or wherein it shall be depending, within sixty days after notice shall, at any time during such non-residence, have been given to the plaintiff or his attorney, by some person interested, that such is required for the payment of the costs which may be awarded to the defendant, and also of the fees that are or may become due to the officers of the court; (3) and after security shall be so given, and the fees not paid at the time the same become due, it shall be lawful for the court in which the cause was commenced, to enter up judgment on motion against such security, and award execution accordingly.

Judgment and execution against security, on motion.

1807—(17) *Sec.* 9. Attorney issuing writ for non-residents, may be ruled for security—failing to give it, suit dismissed, and execution against attorney for costs.

§ 26. When any process shall issue from any of the courts of this territory, by the direction of any attorney, for any person or persons residing out of this territory, against any person or persons residing within the same, the person or persons suing for such process, or prosecuting such suit, at the return of such process, or at any time thereafter when required, shall, upon motion, be ruled to give sufficient security for all costs, accruing in such action or suit; and if such attorney shall fail to give such security, being thereto required, the suit shall be dismissed, and execution may issue against such attorney for all such costs.

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(1) It does not vary the case, though the jury find costs for the plaintiff. Reid *v.* Gordon, 2 *Stewt. Rep.* 469. This statute does not extend to cases of trespass to try titles. McGehee *v.* Evans, 1 *Stewt. Rep.* 589.

(2) The costs chargeable against the successful party, include all except the appearance of the opposite party, and such acts as are done at his instance. Anon.—2 *Stewt. Rep.* 228.

(3) Held not to include non-resident parties to suits in the supreme court. Harris & Farrow *v.* Clapp, *Min. Rep.* 328. Security for costs may be required as well in appeals from justices, as in other cases. Thompson *v.* Miller, 2 *Stewt. Rep.* 470.

§ 27. If any person resident in this territory, shall institute any suit, whether at common law or in chancery, in any of the courts of this territory, and shall after the institution thereof remove out of this territory, such person shall be bound to give security for the costs of such suit, in the same manner and under the same restrictions pointed out for nonresident plaintiffs, in the ninth section of the act entitled "An act establishing the fees of the several officers therein named, and for other purposes," passed the sixth day of February, one thousand eight hundred and seven.[a]

1811—(11) Sec. 8. Plaintiff removing out of the state, required to give security for costs.

§ 28. Any clerk may require security for costs of non-residents, before he issues any writ.

1812—(16) Sec. 9. Clerk may require security of non-residents, before issuing writ.

§ 29. On all bonds hereafter made by non-resident plaintiffs for the prosecution of suits in the county or circuit courts, and to secure the costs of such suits, it shall be lawful for such courts, at the time of rendering final judgment in the cause, to render judgment against the security of such non-residents for the costs adjudged.

1830—(3) Sec. 1. Court shall give judgment against security of non residents, at the time of rendering final judgment in the cause.

Note.—The plaintiff, on suing out a bail-writ, is required to give security for costs. See "Bail in Civil Cases,"—§ 7.

4. Detinue.

§ 30. In any action of detinue, if the plaintiff, his agent or attorney, shall make affidavit that the property sued for belongs to the plaintiff, and shall give bond with sufficient security, to be approved of by the clerk of the court issuing the writ, conditioned that if the plaintiff shall fail in the suit, he shall pay the defendant all costs and damages he may sustain by the wrongful suing out of the writ, it shall be the duty of the clerk of the court issuing the writ by endorsement on the same, to require the sheriff or other officer serving it, to take the property sued for into his possession, unless the defendant shall give bond with sufficient security in double the amount of the value of the property to be taken, payable to the plaintiff, and conditioned that the defendant, if cast in the suit, shall within thirty days after its determination, deliver to the plaintiff the property recovered by such suit.

1830—(14) Sec. 1. On plaintiff filing affidavit and bond, the sheriff shall take possession of property sued for, unless defendant will give bond for its delivery, if cast.

§ 31. If the defendant in such suit shall neglect for five days, to give the bond required by the first section of this act, the property taken shall be delivered to the plaintiff, on his giving bond and sufficient security in double the amount of the value of the property, payable to the defendant, conditioned to deliver the property to the defendant within five days after demand made, in case he shall fail to recover the same in his said suit; and if the plaintiff shall neglect to give such bond within five days after the time allowed the defendant, it shall be the duty of the officer serving the writ to return the property taken, to the defendant.

Ib. Sec. 2. Defendant to give bond in 5 days, or property delivered to plaintiff, on his giving bond.

Plaintiff failing, defendant to have property.

§ 32. When the defendant shall have given such bond, and a recovery shall be had against him, and he shall neglect to deliver to the plaintiff the property recovered, as provided for by the first section of this act, it shall be the duty of the sheriff, at the plaintiff's request, to make a demand of the property recovered, of the defendant or his security; and if it shall not be delivered within five days after such demand, the sheriff shall return the bond taken in the suit, to the office of the clerk of the court where the recovery shall be had, as forfeited; and such bond so returned, shall have the force and effect of a judgment, and execution thereon shall issue against principal and security for the alternative judgment.

Ib. Sec. 3. On recovery, and failure to deliver property, defendant's bond shall be returned, "forfeited," and execution issue against him and securities.

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[a] See § 25.

Ib. Sec. 4. Plaintiff failing in his suit, and not delivering up property, liable with his securities, to action and damages.

§ 33. If the plaintiff shall fail in such action, and shall neglect to deliver the property taken, after demand made, as provided for by the second section of this act, he, and his securities, shall be liable to an action on such bond, and in case of recovery thereon, damages, not exceeding fifty per centum on the value of the property, shall be given for the detention thereof.

5. Docketing and Order of Causes.

1811—(11) *Sec.* 2. Clerk to keep separate docket for issues, &c.

§ 34. Before any superior or county court, the clerks of said courts shall enter in a particular docket, all such causes, (and those only) in which an issue is to be tried, or inquiry of damages to be made, or a special verdict, or case agreed, or demurrer, or other matter of law is to be argued, in the same order as they stand in the course of proceeding, setting as near as may be, an equal number of causes to each day, and no cause shall be taken up for trial or hearing, at a day previous to that at which it may be set; and the clerk shall issue subpœnas for witnesses to attend on the days on which the causes stand for trial;—and it shall be the duty of the clerk to keep a regular subpœna docket, and to issue subpœnas before every term of the court, for all the witnesses, in every cause, that either party may at any time have directed to be summoned.[1]

To keep subpœna docket, and issue subpœnas.

1815—(12) *Sec.* 1. Clerk to assign causes to particular days. Causes not tried out of their order.

§ 35. It shall be the duty of the clerks of the superior courts in this territory to keep a trial docket, and to assign not less than fifteen causes ready for trial each day of the term, commencing on the first day, and continuing until the docket be gone through. And it shall not be lawful to take up any cause out of the order in which it shall stand upon the trial docket, unless by consent of parties.

1819—(6) *Sec.* 7. Order of proceedings. Arrest of judgment, error, &c.

§ 36. All jury causes shall be first tried; all motions in arrest of judgment shall be argued within the three last days of the term, in which the issue shall be tried; the defendant's attorney first serving the plaintiff's attorney with a copy of the reasons in arrest of judgment, the day immediately following that on which such motion shall be made: arguments on writs of error, special verdicts, cases agreed, demurrers, petitions for legacies, and distributions of intestate estates, shall be heard during the four last days of the term.[2]

1807—(19) *Sec.* 39. Death or absence of judge.

§ 37. No proceedings in any court shall be discontinued by the death of any of the judges or justices thereof, or by their nonattendance at any term; but in such cases, all actions and suits, matters and things depending therein, shall stand continued of course, to the next succeeding term. (1)

Jan. 5, 1833. *Sec.* 1. Order of causes in circuit court of Mobile.

§ 38. The presiding judge of the circuit court of Mobile shall, at every term of said court, try causes in the following order, to wit: appeals from justices of the peace; appeals from the county court; actions of assumpsit; actions of debt, covenant, and detinue, during the first week of the term. The state docket shall be taken up on Monday of the second week, and disposed of, when the residue of the actions of assumpsit, debt, covenant, and detinue, if any there be, shall be tried, dismissed, or continued, when land cases (so called) and all other cases remaining on the common law docket, shall be called in their order and disposed of. Motions shall then be heard and determined, and the term shall close with the trial of all chancery business: *Provided*, That by agreement and consent of the judge, any case may be tried out of its order.

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[1] Witnesses, once subpœnaed, shall attend from term to term, until discharged, or the suit is decided. See "Witnesses,"—§ 2.

[2] Arguments on demurrer shall be heard at the trial in chief. See this title,—§ 109.

(1) A suit not tried at trial term, is discontinued, unless continued by the court, or by operation of law. Kennon *vs.* Bell, *Min. Rep.* 98.

NOTE.—Motions against banks for refusing to pay their notes, &c. have precedence of all other causes. See "Banks,"—§ 2.

6. EJECTMENT.

1815—(7) *Sec.* 1. When defendant has a crop growing on the premises, the jury shall assess rent until the crop can be gathered. Defendant allowed to retain possession until crop is gathered, on giving security for the rent.

§ 39. In all actions of ejectment tried in any of the courts of this territory, if it shall be made to appear to the satisfaction of the jury trying such cause, that the defendant has a crop then planted, or growing upon the premises in question, they shall, if they find the defendant guilty of the trespass and ejectment complained of, assess at the same time such rent as shall be reasonable and just for the plaintiff to receive, for the use of said premises during such time as shall be, in their opinion, sufficient to enable the defendant to gather and secure his crop from off said premises: and no writ of *habere facias possessionem* shall issue upon any such verdict, until the expiration of the time determined by the jury, if the defendant in such action shall enter into bond at any time during the term of the court before which such cause is tried, with sufficient security, to be approved of by said court, in the penalty of double the amount of the rent assessed by the jury, payable to the plaintiff, conditioned for the payment of the rent so assessed at the expiration of the time fixed by the jury, for the defendant to hold possession of the said premises.

Ib. Sec. 2. Defendant's bond to be filed with clerk, and if forfeited, execution to issue thereon.

§ 40. All bonds taken in virtue of this act, shall be filed in the clerk's office of the proper court, and shall have the force and effect of a judgment; and if the same be not discharged according to the condition thereof, execution shall issue thereon against the principal and his security, for the sum therein mentioned, as upon other judgments in said court.

1821—(31) *Sec.* 1 & 4. Fictitious proceedings in ejectment abolished, and titles to be tried by actions of trespass.

§ 41. The fictitious proceedings in the action of ejectment are hereby abolished; and hereafter the mode of trying the right and title to lands, tenements, or hereditaments, shall be by action of trespass, in which the plaintiff shall endorse on his writ and copy-writ, that the action is brought as well to try titles as to recover damages; and it shall not be necessary to file the original note, bond, or paper sued on, with the clerk, but a copy thereof shall be sufficient.

Ib. Sec. 2. Law of ejectment applicable to trespass.

§ 42. The laws now in force in relation to the action of ejectment, except as far as relates to fictitious proceedings therein, shall be applied to the action of trespass, to try titles as aforesaid.

Ib. Sec. 3 & 4. Plaintiff recovering, to have execution for possession.

§ 43. If the plaintiff in the aforesaid action of trespass recover, he shall be entitled to an execution for possession, as well as for costs and damages. (1)

7. ERRORS AND AMENDMENTS.

1807—(19) *Sec.* 36. Process, &c., not to be quashed for want of form.

§ 44. No summons, writ, declaration, return, process, judgment, or other proceedings, in any of the courts of this territory, shall be abated, arrested, quashed, or reversed, for any defect or want of form; but the said courts respectively, shall proceed and give judgment, according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form, in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially set down and express, together with his demurrer, as the cause thereof;[1] and the said courts respectively, shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects, and want of form, (other than those which the party demurring shall express as aforesaid,) or any mistake in the Christian name or surname of either party, sum of money, quantity of merchandise, day, month, or year, in the declaration or pleading, the name, sum, or quantity, or time, being right in any part of the record or proceedings; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall, in their discretion, and by their rules, prescribe.

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(1) Various points decided under this statute. White *v.* Saint Guirons, *Min. Rep.* 331.

Court may amend mistakes, or want of form.

a 1811—(11) *Sec.* 12. Judgment on confession, a release of errors.

[a] § 45. Judgment on confession shall amount to a release of errors. (1)

b *Ib. Sec.* 14. No exception in ejectment after issue on title.

[b] § 46. After issue joined, in an ejectment on the title only, no exception to form or substance shall be taken to the declaration in any court.

c 1824—(20) *Sec.* 1. Judgment to cure defects not previously objected to.

[c] § 47. No cause shall be reversed, arrested or otherwise set aside, after verdict or judgment, for any matter on the face of the pleadings not previously objected to; *Provided*, The declaration contains a substantial cause of action, and a material issue be tried thereon.

d *Ib. Sec.* 4. Judgment not to be reversed for clerical mistake.

[d] § 48. No cause shall be reversed by the supreme court or any circuit court, for any miscalculation of interest, or other clerical misprision in entering judgment, so as to give costs to the plaintiff in error; but in all such cases, the supreme court may order the judgment to be amended at the costs of the plaintiff in error.

e *Ib. Sec.* 5. Court may correct clerical errors within three years.

[e] § 49. The circuit and county courts respectively, shall and may at any time within three years after final judgment, upon the application of either party, amend any clerical error, or misprision, in calculation of interest, or other mistake of a clerk, where there is sufficient matter apparent upon the record to amend by; and no cause shall be reversed for any such error or defect, by the supreme court, unless the court of original jurisdiction, where the same was determined, shall, upon application, refuse the amendment.

ERROR, CORAM VOBIS.

1820—(4) *Sec.* 8. Judge, on inspection of record, may grant writ of error, *coram vobis.*

§ 50. Any judge of the circuit courts, on an inspection of the record or the transcript thereof, of any cause in which final judgment shall have been rendered, may, if he shall be of opinion that any material mistake or error has been committed by a ministerial officer after the rendition of judgment, grant a writ of error *coram vobis*, returnable to the next term of the circuit court in which such judgment shall have been rendered, and may direct the said writ to operate as a *supersedeas*, on the party applying for the same, entering into bond and security in the clerk's office, to be approved by the judge granting the same, conditioned for prosecuting the said writ of error to effect, and pay and satisfy the judgment of the court.[f]

f *See* § 52.

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[1] No demurrer shall have any other effect than that of a general demurrer. See this title,—§ 108.

(1) Therefore neither a writ nor declaration is necessary to sustain a judgment by confession. Caller *v.* Denson, *Min. Rep.* 19. Gayle *v.* Foster, *ib.* 125; and nothing can be assigned as error, which arose or existed previous to the judgment by confession: M'Connell *v.* White, *ib.* 112.

§ 51. It shall be the duty of the court to which the writ of error *coram vobis* shall be returned, to try the same at the return term, and in all cases of affirmance, judgment shall be rendered against the plaintiff in error, and his, her, or their security, for the amount of judgment which shall have been suspended, together with five per cent. damages, interest and costs.

Ib. Sec. 9. Writ to be tried at return term. Damages on affirmance.

§ 52. No writ of error *coram vobis* shall be granted, unless the defendant shall pay the amount of principal and interest actually due, before obtaining the same; unless otherwise ordered by the judge granting the said writ: *Provided*, That no security shall be required of the defendant under this act.

1822—(23) *Sec.* 1. Judge may require judgment to be paid before granting writ.

8. Joint Obligors and Partners.

§ 53. *Whereas* joint obligors and other persons, against whom a joint cause of action may exist, frequently reside in different districts, or counties, so that the same individual process cannot reach both or all of such persons, whereby parties having just demands are greatly delayed in prosecuting the same: for remedy whereof, *Be it enacted*, That where any such joint cause of action shall exist, it shall be lawful for the plaintiff in such suit or action, to sue out two or more writs, directed to the sheriffs or other proper officers of the different counties where such defendants or parties jointly chargeable may be found, which process such sheriff or other officer shall execute accordingly, and return to the court from which the same issued, as in other cases; and such writs, so issued and returned, shall be filed together, and shall have the same force and effect, and the same proceedings and recovery may be thereupon had, as if one single writ had issued against all the defendants jointly: but it shall be the duty of the clerk or attorney issuing such process to endorse thereon, that both or all of the said writs are for one and the same cause of action, or otherwise the same shall abate on the plea of the defendant.

1807—(19) *Sec.* 13. Separate writs may issue against joint obligors, residing in different counties.

To be filed together, when returned.

Clerk or attorney to endorse, that they are all for the same cause of action.

§ 54. *And whereas* it is a rule of common law, that in case of the death of a joint obligor, the debt can never survive against his heirs, executors, or administrators, which rule is frequently injurious and oppressive to the surviving obligors: to remedy which, *Be it enacted*, That, in case of the death of one or more joint obligor or obligors, the joint debt or contract shall survive against the heirs, executors, and administrators of the deceased obligor or obligors, as well as against the survivor or survivors: and when all the obligors shall die, the debt or contract shall survive against the heirs, executors, and administrators of all the said joint obligors.

Ib. Sec. 14. On death of a joint obligor, the debt shall survive against his representatives.

§ 55. Every joint bond, covenant, bill, promissory note, or judgment of any court of record of any state or territory of the United States, shall be deemed and construed to have the same effect in law, as a joint and several bond, covenant, bill, promissory note, or judgment; and it shall be lawful to sue out process and proceed to judgment against any one or more of the obligors, covenanters, or drawers of any such joint bond, covenant, bill, or promissory note, or against any one or more of the defendants to any such joint judgment.

1818—(2) *Sec.* 1. Joint obligations construed as joint and several, and process may issue accordingly.

§ 56. Whenever a writ shall issue against any two or more joint, or joint and several obligors, covenanters, or drawers of any such bond, covenant, bill, or promissory note, or against two or more of the defendants to any such joint judgment, it shall be lawful for the plaintiff or his attorney, at any time after the return of said writ, or an *alias* writ, to discontinue such action against any one or more of the de-

Ib. Sec. 2. Plaintiff may discontinue action against such of the defendants as writ is not served upon, or issue *alias* or *pluries* writ.

fendants, on whom such writ, or *alias* writ, shall not have been executed, and proceed to judgment against any one or more of said defendants on whom said writ shall have been executed, or proceed to issue an *alias* or *pluries* writ, at his election. (1)

Ib. Sec. 8. Writs may issue against any one or more partners. Service on one partner equivalent to service on the firm.

§ 57. Whenever any cause of action may exist against two or more partners, of any denomination whatever, it shall be lawful to prosecute an action against any one or more of them; and when a writ shall be issued against all the partners of any firm, service of the same on any one of them shall be deemed equivalent to a service on all: and the plaintiff may file his declaration and proceed to judgment, as if the said writ had been served on each defendant; and the judgment shall be equally valid and effectual against all the defendants.

Ib. Sec. 12. Suit may be discontinued against such of the defendants as appear not to be partners.

§ 58. Where any suit shall be instituted against two or more persons as partners in any firm, if one or more persons, not partners in said firm, shall have been sued as such, the court before whom such suit is pending, shall discontinue said suit against such person or persons, as shall appear not to be partners in said firm, and proceed to judgment and execution against all or any of the defendants in such action, who shall appear to be partners.

1833—(18) *Sec.* 1. Joint obligors when sued separately may notify and move against co-obligors.

§ 59. Where suit is brought on any joint, or joint and several bond or note, and all the obligors or payers thereto shall not be served with process, it shall be lawful for all or any one of the obligors served with process, to give notice in writing to the other obligors or payers not so served, ten days before the trial term of said suit, that he or they have been sued on such bond or note, and that he or they will at the time when said suit is tried, move the court where the same is depending, for judgment against him or them. [a]And it shall be the duty of said court, upon sufficient proof, to give judgment according to the right and justice of the case, and direct execution to issue, either for the obligee or payee, in such bond or note, or for the plaintiff or plaintiffs[b] in the motion, as may best comport with the justice of the case, and the rights of the parties, and with such endorsements as may be necessary to effect the object; and the executions in both cases, shall be put into the hands of the sheriff or other officer at the same time.

a 1820—(13) *Sec.* 1. Court to give judgment according to the justice of the case, and executions to issue simultaneously. [b 1833—(18) *Sec.* 1.]

Ib. Sec. 2. Defendant in motion may plead.

§ 60. In all cases of motions being made as aforesaid, the defendant therein may plead any plea which may be necessary to try the cause according to the right and justice thereof; and a jury shall be empannelled to try the issue joined between the parties, as in other cases.

9. Judgment and Inquiry of Damages.

1807—(19) *Sec.* 38. Executions to issue on judgments for sum certain—on interlocutory judgments, writ of inquiry to be executed. c *See* § 63 & 64.

§ 61. In all judgments on demurrer, confession, *non sum informatus*, or by default, in actions of debt for a sum certain, the courts are authorized to issue executions for the sums of such judgments, with such interest, by way of damages, as may be legally due, and costs of suit; and in all interlocutory judgments, a writ of inquiry shall be awarded, and such writ of inquiry may be executed at the next succeeding term,[c] and the damages assessed by a jury attending the court in which they were awarded.

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(1) Held not to extend to defendants jointly liable on an unliquidated account, as for goods, wares, &c., and that in such case, a discontinuance can be entered as to those not served with process, only after an *alias* and *pluries* writ returned "not found." Kennedy *v.* Russell & Patten, *Min. Rep.* 77. It embraces warrants issued by justices of the peace, and a discontinuance may be entered in court after an appeal. Wade et al. *v.* Robinson, 1 *Stewt. Rep.* 423. It also extends to actions against joint endorsers. Martin *v.* Townsend, 2 *Stewt. Rep.* 329.

§ 62. In all actions founded on any writing ascertaining the plaintiff's demand, or sum sued for, if judgment by default, *nihil dicit*, or by *non sum informatus*, or on demurrer, be entered therein, the court where the same action shall be pending, shall and may lawfully enter judgment for the debt or demand, and interest thereon, to be calculated by the clerk of such court, up to the time of rendering judgment, without the intervention of a jury to inquire of the damages, and award execution thereon as in other cases. (1)

1812—(8) *Sec.* 3. Judgment final without a jury, where amount is ascertained by the instrument sued on.

§ 63. Whenever the demurrer to the declaration in an action of covenant, trespass, or trespass on the case, shall be overruled, and an inquiry of damages directed by the court, it shall be lawful for the inquiry thereof to be had at the same term at which such demurrer shall be overruled: *Provided*, That nothing herein contained shall be so construed as to authorize the said inquiry of damages to be made at the term to which the writ in said actions may be made returnable.

1822—(8) *Sec.* 1. On overruling demurrer, writ of inquiry, may be executed at the same term. Proviso.

§ 64. In all actions of covenant, case, trespass, and assumpsit, when the declaration is filed in due time, and the defendant has failed to plead, a judgment by default may be taken either in vacation, or at the next succeeding term, and a writ of inquiry executed at said term.

Ib. Sec. 2. Judgment by default, in vacation, and inquiry at next term.

§ 65. It shall be lawful for the plaintiff or plaintiffs in any suit at common law, in any court of record in this state, to dismiss his, her, or their suit, at any time in vacation, on application to the clerk of the court in which said suit may be pending, upon giving the defendant or defendants, his, her, or their attorney, six days' notice of such application: *Provided*, That the notice aforesaid shall not be required in suits, in which the writ has not been executed.

1829—(19) *Sec.* 1. Suits may be dismissed in vacation. No notice, unless writ is executed.

§ 66. The clerks of said courts shall, before dismissing said suit, take a confession of judgment for the costs which may have accrued on the same up to the time of said dismissal; and he shall have full power and authority to issue execution therefor, in the same manner, and under the same regulations, as executions are now issued upon judgments rendered by the circuit and county courts of this state: *Provided*, That the costs shall be paid before dismissal, in all cases in which the plaintiff or plaintiffs do not reside in this state.

Ib. Sec. 2. Clerk to take confession of judgment for costs. Costs to be paid by non-residents before dismissal.

10. JURISDICTION.

[For the jurisdictions of the courts respectively, See "Judiciary."]

§ 67. If any suit shall be commenced in any court for a less sum than such court can legally take cognizance of, or if any person shall demand a greater sum than is due, on purpose to evade this act, in either case, the plaintiff shall be nonsuited, and pay costs: *Provided always*, That if the plaintiff, or any other person for him, will make an affidavit, (to be filed in the clerk's office,) that the sum for which the suit shall be brought is really due, but that for want of proof, or that the time limited for the recovery of any article, bars a recovery, in that case, such plaintiff shall have a verdict and judgment for what appears to be legally proved, anything to the contrary notwithstanding: *And provided also*, That nothing herein contained shall be construed to extend to suits on bonds, penal bills, or any other action of debt

1807—(19) *Sec.* 10. When suit is commenced for a less sum than the court can take cognizance of, plaintiff to be non-suited, unless he makes affidavit. Exceptions.

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(1) But if the common money counts be added in assumpsit on a promissory note, a *nol. pros.* must be entered as to them, before judgment final, without the intervention of a jury, or it will be error. Moreland *v.* Ruffin, *Min. Rep.* 18. Neither can final judgment be entered without a jury, upon an unliquidated account. Martin *v.* Price, *ib.* 68.

grounded on a penalty, where the balance due on such bond or penal bill, or other action of debt, is not of less value than the sums limited for bringing suits in the said court. (1)

11. Limitation of Actions.

1802—(1). *Sec.* 1. Trespass, detinue, trover, debt, account, and case, limited to six years.

§ 68. All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover, and replevin, for taking away of goods and chattels; all actions of debt founded upon any lending, or contract, without specialty, or for arrearages of rent due on a parole demise, and all actions of account, and upon the case, except actions for slander, and except also such actions as concern the trade of merchandise, between merchant and merchant, their factors or agents, shall be commenced within six years next after the cause of such actions shall have accrued, and not after.

Ib. Sec. 2. Assault, battery, &c., to two years.

§ 69. All actions of trespass for assault, menace, battery, wounding, and imprisonment, or any of them, shall be commenced and sued within two years next after the cause of such actions shall have accrued, and not after.

Ib. Sec. 3. Actions on the case for words, to one year. Proviso as to minors femes covert, and insane persons.

§ 70. Every action upon the case for words, shall be commenced and sued within one year next after the words spoken, and not after: *Provided always*, That if any person or persons, who is, are, or shall be entitled to any of the actions hereinbefore specified, is, are, or shall be, at the time of any such cause of action accruing, within the age of twenty-one years, *feme covert*, or insane, then such person or persons may institute such action, so that the same be instituted within such time as is before limited, after his, her, or their coming to or being of full age, discovert, or of sane memory.

Ib. Sec. 5. Actions on leases, specialties, and awards, limited to sixteen years, from time of last payment. Proviso, Minors, &c.

§ 71. Every action of debt, or covenant, for rent or arrearages of rent, founded upon any lease under seal, and every action of debt upon any single or penal bill, for the payment of money only, or upon any obligation, with condition for the payment of money only, or upon any award under the hands and seals of arbitrators, for the payment of money only, shall be commenced and sued within sixteen years after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, specialty, or award, within or after the said period of sixteen years, then an action instituted on such lease, specialty, or award, within sixteen years after such payment, shall be good and effectual in law, and not after: *Provided always*, That the time, during which the person who is or shall be entitled to any of the actions specified in this section, shall have been within the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of sixteen years.

Ib. Sec. 6. *Scire facias*, or action of debt on judgment, in 20 years. Proviso.

§ 72. Judgment in any court of record in this territory, may be revived by *scire facias*, or an action of debt may be brought thereon, within twenty years next after the date of such judgment, and not after: *Provided*, That the time during which the person who is or shall be entitled to the benefit of such judgment, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of twenty years.

Ib. Sec. 7. Entries of land within 20 years.

§ 73. No person who now hath, or hereafter may have, any right or title of entry unto any lands, tenements, or hereditaments, shall

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(1) The decisions under this statute are contradictory. See Howard *v.* Wear, *Min. Rep.* 84. Curtis *v.* Gary, *ib.* 118. Carter *v.* Dade, 1 *Stewt. Rep.* 18.

Proviso.

make an entry therein, but within twenty years next after such right or title shall have accrued, and such person shall be barred from any entry afterward: (1) *Provided always*, That the time during which the person who hath or shall have such right or title of entry, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the same limited period of twenty years.

Ib. Sec. 8. Time of defendant's absence from the state not to be computed.

§ 74. If any person or persons against whom there is or shall be any cause of action, as is specified in the preceding sections of this act, is, or are, or shall be, out of this territory, at the time of the cause of such action accruing, or any time during which a suit might be sustained on such cause of action, then the person or persons, who is or shall be entitled to such action, shall be at liberty to bring the same against such person or persons, after his, her, or their return into this territory; and the time of such person's absence shall not be accounted or taken as a part of the time limited by this act. (2)

Ib. Sec. 9. Suits respecting lands, to be commenced within 30 years. Proviso. Not to affect U. S. lands.

§ 75. Every real, possessory, ancestral, mixed, or other action, for any lands, tenements, or hereditaments, shall be brought and instituted within thirty years next after the right or title thereto or cause of such action accrued, and not after: *Provided always*, That the time during which the person who hath, or shall have such right or title, or cause of action, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed part of the said limited period: *Provided also*, That nothing in this act contained, shall be so construed, as in any wise to affect or interfere with the primary disposal of the vacant lands of the United States within this territory.

Ib. Sec. 10. If plaintiff's judgment be reversed or arrested, suit may be re-commenced within one year thereafter.

§ 76. If in any of the said actions specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by writ of error; or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, then the said plaintiff, his or her heirs, executors, or administrators, as the case shall require, may commence a new action within one year after such judgment reversed or given against the plaintiff, and not after.

1816—(13) *Sec.* 1. Limitation of certain action for lands. Provisos.

§ 77. No person or persons, body politic or corporate, who now have, or shall, or may hereafter have any estate, right, title, claim, or demand, by virtue of any title which has not been confirmed by either of the boards of commissioners of the United States, appointed for settling and adjusting land claims in the Mississippi territory, and not recognized or confirmed by any act of congress, in or to any lands, tenements, or hereditaments in this territory, shall after the expiration of three years from and after the passage of this act, have, prosecute, or maintain any action or suit at law for the recovery thereof, in any court in this territory: *Provided*, That this act shall not extend to claims in that part of this territory formerly a part of West Florida, which have been registered and not acted on by congress: *Provided also*, That if any person or persons who is, are, or shall be entitled to sue or prosecute such suit or action, or who hath, have, or shall have such right or title, shall be within the age of twenty-one years, *feme covert*, or insane, within the time limited by this act, then such person or persons, his, her, or their heirs or assigns, shall and may, at any time within three years next after his, her, or their coming to full age, of sound mind, or *discovert*, bring, sue, and prosecute such suit or action, and at no time thereafter.

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(1) In this state, a possession for twenty years, under claim of title, creates a presumption of a grant. Stodder *v.* Powell, 1 *Stewt. Rep.* 287.

(2) When the statute of limitations begins to run, it continues to run, notwithstanding an intervening disability to sue. But if the time limited has not elapsed at the death of one having the right of action, his executor or administrator may sue within twelve months from his death. Grice *v.* Jones, 1 *Stewt. Rep.* 254.

Ib. Sec. 2. Actions on open accounts limited to 3 years, except between merchants.

§ 78. No action shall be brought to recover any money due by open account, after the expiration of three years from the accruing of the cause of action: *Provided*, That nothing in this act shall apply to the trade of merchandise between merchant and merchant, their factors or agents.

Ib. Sec. 3. Proviso for infants, femes covert, and persons non compos mentis.

§ 79. If any person or persons that is or shall be entitled to any of the personal actions enumerated and mentioned in this act, and in the act for the limitation of actions, and for avoiding vexatious law-suits,[a] be, or shall be, at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, *feme covert*, or *non compos mentis*, then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, *discovert*, or of sane memory, as other persons having no such impediment should have done.

1832—(11) *Sec.* 1. Actions against securities of officers limited to six years,

§ 80. No action, suit, or motion, shall be maintained against the security or securities of any sheriff, constable, or other public officer of this state, for any misfeasance, malfeasance, or other cause whatsoever, hereafter committed, unless the same be commenced and prosecuted within six years next after the commission of the act complained of; or if the claim be in favor of an infant or person *non compos mentis*, or other person disabled by law from bringing suit, then within three years after such disability to sue shall cease to exist:

except as to infants, &c. This limitation does not apply to officers themselves. Not retrospective.

Provided, That this limitation shall not be extended or applied to any action, suit, or motion, which may be maintained by law, against such officer, his executors, administrators or heirs: *And provided further*, That nothing in this act shall be so construed as to have a retrospective operation upon suits now pending.

Ib. Sec. 2. Actions limited to three years for causes heretofore existing.

§ 81. For any misfeasance, malfeasance, or other cause of action heretofore committed by any sheriff, constable, or other officer, no suit, action, or motion shall be maintained against the security or securities of any such sheriff, constable or other officer, unless the same be commenced and prosecuted within three years after the passage of this act; subject always to the proviso in the first section of this act.

12. Motions against Officers of Court.

1822—(20) *Sec.* 1. Where receipt of money by officer does not appear by the record, court shall direct the issue to be tried by a jury,— and render judgment.

§ 82. Whenever a motion shall be made against any officer of any of the courts of this state for not paying over any money received by him in his official capacity, and the receipt of the same shall not appear by the record or any paper filed in the clerk's office, it shall be the duty of the court to cause an issue to be made up, and tried by the jury attending the court; and in case it shall be found by the jury that the same has been received by the officer against whom the motion shall be made, judgment shall be rendered by the court against the said officer, for the principal, interest, and such damages as are now in such cases directed by law.

Note.—For the mode of proceeding against officers holding executions, See "Executions," 8. Attorneys refusing to pay over money collected by them, are liable to the same summary proceeding as sheriffs. See "Attorneys,"—§ 5.

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[a] *The preceding act*, § 68 *to* 76.

13. Penal Bonds.

§ 83. In all actions, which shall be brought upon any penal bond or bonds, for the payment of money, wherein the plaintiff shall recover, judgment shall be entered for no more than the principal and interest due on said bond.

1811—(11) *Sec.* 24. Judgment to be entered only for principal and interest.

§ 84. In all actions, in any court of record, upon any bond, or on any penal sum, for nonperformance of any covenants or agreements contained in any indenture, deed, or writing, the plaintiff or plaintiffs may assign as many breaches as he or they may think fit; and the jury upon trial of such action or actions, shall assess damages for such of the breaches as the plaintiff shall prove; and the like judgment shall be entered on such verdict, as heretofore has been usually done in such actions.

1824—(6) *Sec.* 1. Plaintiff may assign any number of breaches, and damages allowed for such as are proved.

§ 85. If judgment shall be given for the plaintiff on confession for an indefinite sum, or on demurrer, or by *nil dicit*, in any such action, the plaintiff may assign as many breaches as he shall think fit; upon which a jury shall be empannelled at the same term of the court in which judgment has been rendered as aforesaid, to inquire of the truth of those breaches, and to assess the damages the plaintiff shall have sustained thereby.

Ib. Sec. 2. Breaches may be assigned and tried after judgment by default for an indefinite sum.

§ 86. In case the defendant, after such judgment, and before execution, shall pay into court, to the use of the plaintiff, the damages assessed, and costs, a stay of execution shall be entered upon the record; or if, by reason of an execution, the plaintiff shall be fully paid all the damages and costs, and the charges of the execution, the defendant's body, lands, or goods shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon record; but in each case the judgment shall, notwithstanding, remain as a farther security, to answer to the plaintiff such damages as he may sustain by any further breach of covenant contained in the same indenture, deed, or writing; upon which the plaintiff may have a *scire facias* upon the said judgment against the defendant, his heirs, executors, or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to show cause why execution should not be awarded upon the said judgment; upon which there shall be the like proceeding as was in the action upon the said bond, for assessing of damages upon trial of issue joined upon such breaches, or inquiring thereof upon empannelling a jury in manner aforesaid; and upon payment or satisfaction as aforesaid, of such future damages, costs, and charges, as aforesaid, all further proceedings on the judgment are again to be stayed, and so *toties quoties*; and the defendant's body, land, or goods, shall be discharged out of execution as aforesaid.

Ib. Sec. 3. On payment of the damages, stay of execution to be entered on the record,—but judgment to remain as a farther security for other breaches.

14. Penalties. (1)

§ 87. In all cases where a penalty may be incurred, or a sum of money forfeited by any person or persons, by reason of the violation

1828—(47) *Sec.* 1. Penalties recoverable by action of debt, when no mode is pointed out by the statute imposing them.

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(1) Where a penalty is incurred under a statute, it must be recovered while the statute is in force: and when the statute is repealed, penalties incurred under it, though before the repeal, cannot be recovered. The State *v.* Tombecbee Bank, 1 *Stewt. Rep.* 347. But the repeal of the statute, pending a writ of error, does not divest the plaintiff's right. Taylor *v.* Rushing, 2 *Stewt. Rep.* 160.

of, or non-compliance with, the provisions of any statute of this state, when by such statute no mode is pointed out for the recovery of such penalty, or the use to which the same shall be applied is not by such statute declared, the said penalty, sum or sums forfeited, shall be recoverable by action of debt in the circuit or county court of the county wherein such penalty may have been incurred, or sum forfeited, or before a justice of the peace of any such county; which action shall be brought and prosecuted jointly in the name of any such county as aforesaid, and of the person or persons suing for the same; and when recovered, shall inure, the one moiety to any such county, for the use of the paupers thereof, and the other moiety to the person or persons suing for and recovering the same.

Appropriated to prosecutor, and paupers of the county.

Ib. Sec. 2. Costs allowed in *qui tam* actions.

§ 88. In all *qui tam* actions, or suits in the nature thereof, the party prevailing in the suit, shall be entitled to recover costs as in other actions at law.

1829—(14) *Sec.* 7. Citizens of the county entitled to the penalty, not incompetent as jurors.

§ 89. In all actions which may be brought by virtue of any statute which now is, or may hereafter be in force, for the recovery of any penalty or penalties, or of a part thereof: and when the whole, or a part thereof, shall inure to any county in which any such action shall be brought, it shall not be lawful, nor shall any defendant or defendants to any such action or actions, be permitted to except to the competency of any citizen as a juror, on account of his residence in the county in which such action or actions may be brought.

15. Petition and Summons.

1820—(21) *Sec.* 1.

§ 90. When any person or persons, holding a bond or note for the direct payment of money, may desire to bring suit thereon, he or they may do so, by filing such bond or note, with the clerk of any court having jurisdiction thereof, with a petition purporting as follows: "State of Alabama, Circuit or County, ss. A. B. plaintiff, states that he holds a bond or note, (as the case may be) on the defendant, C. D., in substance as followeth: (here insert a copy of the bond or note;) yet the said debt remains unpaid, wherefore he prays judgment for his debt, and damages for the detention of the same, together with his costs, &c. A. B."

Petition.

Ib. Sec. 2. Endorsement to be recited.

§ 91. If such bond or note is held by an assignee or endorsee, then, after reciting the bond or note, "on which is the following assignment or endorsement, (recite the assignment or endorsement,) whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice."

Ib. Sec. 3. Defendant to be served with copy of the petition, and summons annexed.

§ 92. A copy of the petition, with a summons annexed thereto, requiring the defendant to appear and answer the demand on the first day of the next succeeding term, shall be issued by the clerk, and served by the sheriff by delivering a copy of the petition and summons to the defendant, and each of the defendants, if there be more than one.

Ib. Sec. 4. Judgment at first term, if executed five days before, &c.

§ 93. The sheriff in his return shall note the day on which it shall have been executed, and whenever it shall appear therefrom that it has been executed five days or more before the return day, judgment may be rendered the first term, subject, however, to be continued for cause shown; but if the process be not executed five days before the return day thereof, a continuance shall be entered, unless a trial shall be had by consent of parties.

Ib. Sec. 5. Petition in lieu of declaration.

§ 94. The petition shall stand in the place of a declaration, and the defendant may appear and plead thereto, as in an action of debt, and issue be joined accordingly; which issue shall stand over to, and be tried at, the next term of the court in which such suit may be instituted, unless a trial is had at the first term by consent of the parties, but if the defendant does not appear and plead, judgment may be taken by default.

Judgment by default.

Ib. Sec. 6. Judgment at return term, unless plea filed.

§ 95. It shall be lawful, in all actions of debt, assumpsit and covenant, to take judgment at the return term thereof, but the defendant may, upon filing a plea to the merits, have the suit continued.

Ib. Sec. 7. Judgment, lien on estate. Stay of execution.

§ 96. In all cases, when judgment passes against the defendant at the first term, such judgment from the date thereof shall be a lien on the estate of the defendant, but execution shall not issue thereon, until the expiration of sixty days after the end of said term.

Ib. Sec. 8. Judgment may be stayed. Recognizance.

§ 97. If the defendant shall, before execution issues on such judgment, tender to the clerk of the court where the judgment was rendered, good and sufficient security, to be approved of by the said clerk, for the amount of the judgment, interest, and costs of suit, the clerk shall take a recognizance to the effect following: "Whereas, A. B., plaintiff, at the term of court, obtained a judgment against C. D., defendant, for the sum of debt, interest, or damage, (as the case may be,) and costs of suit: (or if the judgment be in damages therefor, the sum of damages, and costs of suit;) and whereas the said C. D. hath tendered E. F. to be bound with him to the said A. B., for the amount of the said judgment, interest and costs, I, G. H., clerk of the said court, do hereby accept for the said A. B., the following recognizances, to wit: We, the said C. D. and E. F., hereby acknowledge ourselves to be bound to the said A. B. in the sum of debt, interest or damage, and costs of suit; (or damages, and costs of suit, as the case may be,) and the further sum of for taking this recognizance, to be paid to the said A. B. six months after the date hereof, with interest thereon from the date of said judgment; and if we shall delay payment thereof, for the space of sixty days after the said term of six months, then execution is to issue against our estates or bodies, as the said A. B. may direct, for the amount of this recognizance with interest as aforesaid. Signed, sealed, and delivered, in the presence of the said G. H., clerk of . C. D., [L.S.] E. F., [L.S.]" Which recognizance shall have the force and effect of a judgment, and execution may issue thereon as upon other judgments. But after the execution of the recognizance as aforesaid, the lien created by the judgment shall cease.

Recognizance to have force of a judgment, but lien to cease.

Ib. Sec. 9. Recognizance, how satisfied.

§ 98. The said recognizance may be satisfied and discharged by the payment of the amount thereof to the clerk of said court, at any time before execution issues thereon, and by paying one half per centum thereon to said clerk, for his trouble in collecting and securing the money. And upon the payment thereof, the clerk shall, in the presence of the said defendant, his agent or attorney, enter on said recognizance, satisfaction in full, and carefully file and preserve the same among the papers of the suit. And he shall also execute to the defendant a receipt in full upon such payment.

Ib. Sec. 10. Penalty on clerks for failing to pay over money.

§ 99. If any clerk shall fail to pay over to the plaintiff money received as aforesaid when required, he shall pay the same with six per cent. per month thereon, to be recovered by motion, upon ten days' notice thereof before said court, with such costs as may be awarded against him.

Ib. Sec. 11. This law remedial.

§ 100. Nothing in this act shall be so construed as to take away any remedy or defence heretofore allowed by law, nor shall this act be otherwise construed, than as a remedial statute.

Ib. Sec. 12. Clerk's fees.

§ 101. The clerk shall be allowed for issuing a summons and copying the petition, fifty cents; and for taking recognizance under this act, fifty cents; and for receiving and paying over money to the plaintiff, one half per centum thereon, to be taxed in the bill of costs.

16. Pleading.

1807—(19) *Sec.* 33. Any number of pleas allowed, provided, &c. *Non est factum* must be sworn to.

§ 102. The defendant in any cause, may plead as many several matters as he may judge necessary to his defence; *Provided* he be not admitted to plead and demur to the whole: *And provided also*, that no plea of *non est factum* shall be admitted to be pleaded, but when accompanied with an affidavit of its truth. (1)

Ib. Sec. 34. Plea in abatement must be verified.

§ 103. No plea in abatement shall be received in any court, unless accompanied with an affidavit of the truth of such plea, or the truth of it otherwise appear.

1819—(6) *Sec.* 7. Declaration to be filed within three days after return of writ, but court may enlarge the time. Cause dismissed for want of declaration, attorney liable for the costs, and to an action for damages. Defendant shall appear, and plead or demur, within three days after declaration filed, or judgment by default. Time for special pleading may be extended.

§ 104. The following rules and regulations shall be observed in the said courts until otherwise directed by law, viz: That every plaintiff or his attorney when employed in any suit, in any of the circuit courts[1] of this state, shall file his declaration in the clerk's office, any time within the first three days of the term, to which the writ is made returnable; and on failure thereof, such suit shall be dismissed by the court, at the cost of the plaintiff; *Provided nevertheless*, That the judge on good cause shown, may grant a longer time; which cost being paid by the plaintiff to the clerk of said court, he or they paying such cost in consequence of a declaration not being filed in due time, as aforesaid, may warrant such attorney for all such cost paid by him as aforesaid, and the receipt of the clerk shall be evidence in support of such claim; and the justice before whom such warrant shall be tried, may give judgment and issue execution thereon; and such attorney shall be further liable to the action of such plaintiff, for such damages as he or they may have sustained in consequence of such declaration not having been filed as aforesaid. The defendant shall appear and plead or demur, within the first three days after the time allowed for filing declaration, otherwise the plaintiff may have judgment by default, which in actions of debt shall be final, unless where damages are suggested on the roll; and in that case, and in all others not herein specially provided for, when the recovery shall be in damages, a writ of inquiry shall be executed at the next succeeding term:[2] *Provided*, That where the nature of the actions requires special pleading, the time for pleading may be enlarged:—where the defendant pleads specially, the plaintiff shall reply or demur, within three days after the time allowed for filing the declaration, or a *non pros* may be entered by the defendant; and if the plaintiff replies, and in his replication tenders an issue, the defendant shall join issue or demur in three days, otherwise the plaintiff may have judgment; and where the defendant rejoins to the plaintiff's replication, he shall file his rejoinder within three days, or judgment shall go against him; unless the term for pleading shall be enlarged as aforesaid, and the same time shall be given, and rules observed, through the whole course of the proceedings: *Provided*, That in every case, the pleadings shall be made up during the term to which the process is returned, (1) unless the time be extended by the consent of parties, their attorneys, or by direction of the court. Where a special verdict shall be found, a case agreed, a demurrer filed, or a bill of exceptions to the evidence tendered, the court may, for a good cause shown, continue the same until the next term for argument. When a plea in abatement shall be pleaded, and upon argument, the same shall be adjudged insufficient, the plaintiff shall recover against the defendant, full costs to the time of overruling such plea, including the costs of court.

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[1] See "Judiciary—County Court,"—§ 12.

[2] See this title,—§ 61 to 64.

(1) A joint and several plea of *non est factum* by a firm, may be verified by the affidavit of either partner. Garner et al. *v.* Simpsons, *Min. Rep.* 67. An affidavit is sufficient if it state special facts, from which the truth of the plea may be inferred. Tindal's Administratrix *v.* Bright, *Min. Rep.* 103. An administrator pleading *non est factum* to an instrument purporting to be made by his intestate, must verify the plea by oath:—But an affidavit to the best of his knowledge and belief, is sufficient. Martin, Administrator, *v.* Dortch, 1. *Stewt. Rep.* 479. A defendant is not compelled to plead *non est factum* generally, with an absolute affidavit, but may state in a special plea the particular facts which amount to a denial of the legal validity of the instrument, or may deny the authority of the agent who made it. *ib.* A *replication* of *non est factum*, is not required to be verified on oath. Parks & Burke *v.* Greening, *Min. Rep.* 178.

Throughout the proceedings an issue tendered must be replied to within 3 days, or judgment of *non pros*, or by default, may be entered,—

but pleadings shall be made up at return term, unless by consent of parties.

Costs, on overruling plea of abatement.

§ 105. No declaration, plea, or replication, which sets forth or states any obligation or instrument of writing under which such party claims a benefit, and which is alleged to be lost, and not in the power of the party to produce said instrument or obligation in court, shall be received in any of the courts of this state, unless such party make oath of the truth of such statement in his declaration, plea, or replication, as the case may be.

1823—(29) *Sec.* 1. Lost instrument must be pleaded on oath.

§ 106. It shall not be required of the plaintiff, in any suit by attachment, founded upon a cause of action not due, to file his pleadings before the first term of the court, after such cause of action falls due, and the same may be dated as of the term when filed.

1832—(3) *Sec.* 1. Declaration in attachment may be filed when debt falls due.

Demurrers.

§ 107. When any demurrer to evidence, demurrer to the declaration or plea in any cause depending before the several courts in this territory, shall appear frivolous and intended for delay, it shall be lawful for the court where the cause is depending, to reject such demurrer on motion, and proceed to trial as if the same had not been offered.

1807—(17) *Sec.* 6. Frivolous demurrer may be rejected on motion.

§ 108. No demurrer shall have any other effect than that of a general demurrer, and the courts at any time previous to the term at which such demurrer shall stand for argument, may allow the party on application, to amend his pleadings without terms, and after judgment in favor of the demurrer, may authorize an amendment on terms. And if the demurrer be overruled, the court shall grant leave to the party demurring to withdraw the demurrer, and plead to the merits of the action, upon such terms as the justice of the case may require.

1824—(20) *Sec.* 2. All demurrers general.

Pleadings may be amended.

Plea to the merits, after demurrer overruled.

§ 109. All demurrers to any part of the pleadings in suits at law, shall be tried when the cause is called for trial, and shall not be delayed until motion day, or the last four days of the term. And it shall be the duty of the circuit and county courts respectively, to hear and

Ib. Sec. 3. Demurrers to be tried when the cause is called.

Motions to dissolve injunctions to be heard each term.

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(1) Judgment by default for want of a plea, cannot be taken until three days after the time allowed for filing declaration, although the term of the court may not continue so long. Rather *v.* Owen, 1 *Stewt. Rep*, 38. Gwynn *v.* Weaver, *ib.* 219.

determine, at each and every term, all motions for the dissolution of injunctions.

17. Process.

Con. Ala. Art. 5, *Sec.* 17.

§ 110. The style of all process shall be "The State of Alabama."

1807—(20) *Sec.* 16. Process shall be returnable on first day of the term, and executed five days before court.

§ 111. All original process, and all subsequent process thereupon to bring any person or persons to answer to any action, suit, bill, or plaint, in any court in this territory, (except subpœnas for witnesses, which, in term time, may be made returnable immediately,) shall be issued by the clerk of such court, and shall be returnable to the first day of the term, and shall be executed at least five days before the return thereof; (1) and if any person shall take out any writ or process while such court is sitting, or within five days before the beginning of the term, such writ or process shall be made returnable to the term next after that then held, or to be held within five days as aforesaid, and not otherwise: and all writs and process issued, made returnable, or executed, in any other manner, or at any other time, than is herein before directed, may be abated on the plea of the defendant: [a]*Provided nevertheless*, That nothing herein contained shall be construed to invalidate or vacate any process, warrant, or precept, to be issued by any of the judges of the said court, or any justice of the peace, or clerk of any court, or any original prosecution, in behalf of the state; but that the same may be issued at any time, and made returnable to any day of the term: and the like proceedings on criminal suits and prosecutions, shall be agreeable to the practice heretofore in use in the territorial government, except where the same is, or may be otherwise directed, by this or some other act.[1]

Otherwise issued or executed, may be abated.

[a 1819—(6) *Sec.* 6.] Criminal process may be issued at any time, returnable to any day of the term. Proceedings as heretofore under the territorial government.

1807—(19) *Sec.* 31. Cause of action to be endorsed, and copy of writ and endorsement to be left with the defendant.

§ 112. It shall not be necessary that any declaration or copy thereof, accompany such writ or process, but a copy of such writ shall be left with the defendant, at the time of serving, and by the officer serving the same. (2) And it shall be the duty of the clerk, or plaintiff's attorney, to endorse on the back of the writ, the cause of the action, the nature of the specialty, or the other grounds on which the action is founded: and the sheriff, on executing the writ, shall deliver to the defendant, together with a copy of the writ, a copy of the said endorsement. (3)

1818—(18) *Sec.* 1. How tested and signed.

§ 113. All writs issued from any of the courts, shall bear teste in the name of, and be signed by, the clerk of the court from which they may be issued.

1819—(6) *Sec.* 5. Day of issuance and receipt by the sheriff, to be endorsed. Penalty for neglect.

§ 114. The clerk or attorney issuing process, shall mark thereon the day on which such process issued; and the sheriff or other officer receiving the same, in order to execute, shall in like manner mark on each process the day on which he received it; and every clerk, attorney, sheriff, or other officer, neglecting so to do, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof, by any person who will sue for the same, with costs.

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[1] The previous part of the section from which this proviso is taken, is substantially the same with the one to which it is appended, but is omitted as not being so full and explicit.

(1) Writs should be executed and returned in the name of the sheriff, and not in that of the deputy. Land *v.* Patteson, *Min. Rep.* 14. But if the deputy uses the name of the principal, so that the act done purports to be the act of the principal, though done by his deputy, the return is sufficient.—Briggs & M'Clure *v.* Greenlee, *ib.* 123.

(2) Acknowledgment of service by one partner is binding on the firm. Click & Morgan *v.* Click, *Min. Rep.* 79.

(3) Omission of endorsement is cause of error, unless cured by some act of the defendant, such as appearing, pleading, &c. Howell & Smith *v.* Hallett, *Min. Rep.* 102. After the return term of the writ, no exception can be taken for the want of an endorsement. Tankersley *v.* Richardson, 2 *Stewt. Rep.* 130.

§ 115. When a writ or other process shall issue to the sheriff of the county where the defendant resides, service of such writ or other process shall be good and valid, if the said sheriff shall execute the said writ or other process in any adjacent county, or in lands to which the Indian title has not been extinguished, and return the same to the court from which the writ or other process issued.

1818—(14) *Sec.* 7. May be served in any adjacent county, or on Indian lands.

§ 116. All writs returnable to any court of record, shall bear teste on the day on which the same shall be issued.

1819—(10) *Sec.* 4. When to bear teste.

§ 117. On the return of a *capias ad respondendum*, against any person or persons legally liable to be sued in the court from which such writ may issue, that the defendant or defendants is or are not to be found, the plaintiff or plaintiffs may have a *testatum capias*, or judicial attachment to any other county, which process shall be executed according to its commands, and returned to the court from which the same issued, as in other cases: *Provided*, Nothing in this section shall extend to any but such actions as are termed in law local actions.

1811—(11) *Sec.* 1. On *non est inventus* in a local action, plaintiff may have a *testatum capias*, or judicial attachment to any county.

§ 118. In every case, where persons who are within age may sue, their next friends shall be admitted to sue for them.

1807—(24) *Sec.* 2. Infants may sue by their next friends.

§ 119. It shall be the duty of the sheriffs in the several counties in this state, to return all writs and executions to the clerk's office from which they shall issue, at least three days previously to the term of the court to which they shall be returnable; and if any sheriff shall fail to return any writ or execution, according to the provisions of this act, he shall be liable to all the penalties provided by the laws now in force, for failing to return any writ or execution to the first day of the term of the court to which they are returnable.[1] (1)

1821—(30) *Sec.* 1. Writs and executions to be returned 3 days before the first day of the term.

18. Real and Possessory Actions.

§ 120. In all actions real or possessory, hereafter brought or prosecuted in any court in this territory, for any lands, tenements, or hereditaments, against any person or persons, body politic or corporate, deriving title to such lands, tenements, or hereditaments, by, from, or under the United States, or by, from, or under any Spanish grant, or order of survey recognized or confirmed by the United States' board of commissioners, east or west of Pearl river, the person or persons prosecuting any such action against any person or persons, body politic or corporate, claiming and deriving title under the United States, or by, from, or under any Spanish grant, or order of survey recognized and confirmed by either of the said boards of commissioners, and recovering judgment for any lands, tenements, and hereditaments, from any person or persons, body politic or corporate, having derived title by, from, under, or through the United States, or any Spanish

1816—(12) *Sec.* 1. In certain real actions, improvements to be paid for, before writ of possession is awarded.

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[1] See "Executions,"—§ 22, 23, and note 1.

(1) The statute requiring the return of execution three days before court, admits of a ressonable excuse for a failure so to return: and where judgment has been rendered against a sheriff, he may have relief in chancery by showing a sufficient excuse for the failure, and also for not making a defence at law. Roberts & Battle *v.* Henry, 2 *Stewt. Rep.* 42.

Appraisers may be appointed by the court to value the improvements.

Unnecessary improvements after service of declaration, not included.

grant, or order of survey recognized and confirmed as aforesaid, the person or persons so obtaining judgment, shall not have any writ of possession or seisin, nor obtain possession or seisin of such lands, tenements, or hereditaments, until he, she, or they shall have first paid to the person or persons, body politic or corporate, possessing the title thereto, derived from or under the United States, or by, from, or under any Spanish grant, or order of survey recognized and confirmed as aforesaid, the full value of all improvements, made thereon, as the same shall be estimated, valued, and ascertained, on oath, by five appraisers, which appraisers shall be, by rule for that purpose, appointed by the court in which such judgment shall have been obtained, unless the parties shall agree on the value of such improvements, or agree on and submit to appraisers to value the same: *Provided always*, That this act shall not extend and be so construed, as to compel any plaintiff or plaintiffs in any of the said actions to pay for any improvement or improvements, not needful and necessary, which may be made on the premises, after the service of the writ or declaration in ejectment.

Ib. Sec. 2.
Persons ousted, and failing in an action for the premises, may recover the value of the improvements,
with double damages and costs.

§ 121. If any person or persons, body politic or corporate, deriving title to any lands, tenements, or hereditaments, by, from, or under the United States, or under any Spanish grant, or order of survey recognized and confirmed as aforesaid, be disseised, ousted, or turned out of possession of said lands, tenements, or hereditaments, by any person or persons claiming, or pretending to claim title to such lands, tenements, or hereditaments, and on a trial in due course of law, a judgment should be rendered in favor of the title of said person or persons, ousting, dispossessing, or disseising the person or persons, body politic or corporate, deriving title by, or under the United States, or by order of any Spanish grant, or order of survey recognized and confirmed as aforesaid, it shall and may be lawful for the person or persons, body politic or corporate, so disseised, ousted, or turned out of possession, to recover from the person or persons so ousting, dispossessing, or disseising, the full value of all improvements made on said lands, tenements, or hereditaments, together with double damages and costs, in any court having jurisdiction of the same.

19. Scire Facias and Notice.

1826—(39)
Sec. 4.
Scire facias need not be served in presence of witnesses.
May issue to legal representatives at any time.

§ 122. The return of any sheriff, that he has served, executed, or made known, any *scire facias*, shall be good and sufficient, without its being served, executed, or made known in the presence of witnesses; and a *scire facias* to the legal representatives of any plaintiff or defendant, who may have died pending the suit, may at any time issue from the office of the clerk of the court in which the said cause may be pending.

1818—(14)
Sec. 10.
Written notice to the attorney, sufficient.

§ 123. In all cases pending before any of the courts of record, written notice to the attorney of record shall be as valid and legal, to all intents and purposes, as if served on the party in person.

1826—(34)
Sec. 1.
Notice may be served by the sheriff.

§ 124. All notices in writing, which may be necessary or proper to be given by either plaintiff or defendant in any suit, either at common law or in chancery, may be served by the sheriff of any county, and the return of the sheriff of the service of the same, shall be good and sufficient in any court of record in this state.

Ib. Sec. 2.
Fee 50 cents.

§ 125. The sheriffs of the several counties in this state, shall have and receive the sum of fifty cents for each notice served by them, by virtue of this act.

20. Set-off and Tender.

§ 126.[1] In all cases where there are or shall be mutual debts subsisting between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, where there are mutual debts subsisting between the testator or intestate and either party, one debt may be set against the other, (1) either by being pleaded in bar, or given in evidence on the general issue, or notice given of the particular sum intended to be set off, and on what account the same is due, notwithstanding such debts may be deemed in law to be of a different nature; but if either debt arose by reason of a penalty, the sum intended to be set off shall be pleaded in bar, setting forth what is justly due on either side, any law, usage, or custom to the contrary notwithstanding; [a]and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant, and judgment shall be entered, that the plaintiff shall take nothing by his writ, and shall pay the costs. And if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid shall be defalked and deducted out of the plaintiff's demands; and the plaintiff shall have judgment for the residue only, with costs of suit. But if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal, certify to the court, how much they find the plaintiff to be indebted, or in arrear to the defendant, more than will answer the debt or sum demanded: (2) [b]*and it shall be the duty of the court to enter up judgment for the amount so certified, for which execution may issue as in other cases: Provided always,* That in all cases where a tender shall be made, and full payment be offered by discount or otherwise, in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterward will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit: *Provided also,* That in all cases where the plaintiff and defendant having accounts to produce one against another, shall by themselves, or attorneys, or agents, consent to a rule of court, for referring the adjustment thereof to certain persons mutually chosen by them in open court, (the award or report of such referees being made according to the submission of the parties, approved of by the court, and entered upon the record, or roll,) shall have the same effect, and be deemed and taken to be as available in law, as a verdict given by twelve men. And the party to whom any sum or sums of money are hereby awarded to be paid, shall have judgment for the recovery thereof, as is hereinbefore directed, concerning sums found and settled by a jury.

1824—(3) *Sec.* 2. Mutual debts may be set off, either under plea in bar, general issue, or notice of set-off.

Debt accruing by penalty to be pleaded in bar.

[a 1799—(1) *Sec.* 1.] Judgment where the plaintiff's demand is fully, partially, or overpaid.

[b 1827—(37) *Sec.* 2.] Plaintiff after tender, not entitled to costs.

Award of referees under a rule of court, to have the force of a judgment.

21. Suits against the State.

§ 127. The general assembly shall direct, by law, in what manner and in what courts, suits may be brought against the state.

Con. Ala. Art. 6. *Sec.* 9.

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[1] The first section of this act repeals so much of the act of 1799, "as permits defendants under the plea of payment, to give any bond, bill, receipt, or account, in evidence."

(1) Plaintiff's note assigned to defendant cannot be set off, unless assigned before suit brought. Gross *v.* Van Wick et al., *Min. Rep.* 7.

(2) The holder of a note may erase credits entered by mistake. Whether so entered, must be determined by the jury, and not the court. Tubb *v.* Madding, *Min. Rep.* 129.

1827—(7) *Sec.* 1. Circuit court to have jurisdiction against the state, where its own citizens are plaintiffs. Appeals allowed.

§ 128. The several circuit courts of this state shall have original jurisdiction in all civil causes, in which the citizens or inhabitants of the state of Alabama may be parties plaintiff, and the state of Alabama may be defendant, saving to the plaintiffs or defendant in all cases, the right to remove their said causes to the supreme court after judgment by appeal or writ of error, pursuant to the provisions of the existing laws.

Ib. Sec. 2. Suits to be commenced by summons or subpœna; to be served on the governor.

[a 1820—(11) *Sec.* 9.] Court to receive and record testimony.

Jury to return a special verdict.

§ 129. The manner of instituting suits against the said state, shall be by the plaintiff or plaintiffs, in suit at law, suing out of the circuit court clerk's office, in which the action may be originated, a summons, and in cases of chancery, a subpœna in chancery, returnable to the next succeeding term of the circuit court of the county in which the action may be brought; which summons or subpœna shall be served on the governor by the sheriff of the county in which the suit may be brought, or by the sheriff of the county in which he may be at the time of the commencement of the suit, and shall be deemed the leading process in such suit, and shall have the like effect and incidents, as writs, and other subpœnas in chancery, sued out, and made returnable to said courts respectively. [a]And it shall be the duty of the court to receive and record all testimony applicable to the merits of the case, and to give judgment for or against the state, as to justice shall appertain: *Provided*, That if the plaintiff shall demand a trial by jury, the court shall thereupon *empannel a jury of by-standers*,[1] and it shall be the duty of said jury in all cases to return a special verdict, and in that case, it shall not be the duty of the court to record the testimony; but the judgment of the court shall be rendered upon such verdict.

Ib. Sec. 3. Appeals by the state limited to the usual time.

§ 130. No appeal or writ of error shall be prosecuted by the state to reverse any judgment obtained against it, in any of the circuit courts of this state, except such writ of error be sued out, or such appeal be taken within the time prescribed by law, in cases to which the state is not a party.

Ib. Sec. 4. Comptroller, on certificate of the clerk, to draw his warrant for the amount of the judgment. Certificate not to issue for six months. Judge to attest certificate.

§ 131. It shall be the duty of the comptroller of public accounts, on the certificate of any clerk of the circuit court in this state, or of the supreme court of this state, that a judgment has been rendered in the court of which he is clerk, against the state in favor of any plaintiff, specifying the amount of recovery, to draw his warrant on the state treasurer in favor of the party recovering such judgment, for the amount thereof: *Provided*, That no clerk of any circuit court shall issue any certificate pursuant to the foregoing provisions, until six months after the rendition of the judgment: *And provided further*, That in addition to the certificate of the clerk of the circuit court, the judge who presided at the trial shall certify that the same is correct.

Ib. Sec. 5. Duty of attorney general and solicitors. Writ of error to state without security.

§ 132. It shall be the duty of the solicitor or attorney general attending any circuit court, where any suit is pending against the state, to attend to the same in behalf of the state, whose duty it shall be to order a writ of error on the rendition of any judgment against the state, if he thinks proper, which shall be issued by the clerk as a matter of course, without security, and shall operate as a supersedeas.

Ib. Sec. 6. Court may appoint assistant counsel.

§ 133. The court, before whom any suit is tried pursuant to the foregoing provisions of this act, shall, if necessary, appoint one additional attorney, to aid the solicitor or attorney general; who, with the solicitor or attorney general, shall receive for his services out of the public treasury, a compensation to be fixed by the said judge, who shall certify the same to the comptroller.

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[1] This clause is taken from the act which directed suits against the state to be commenced by petition to the supreme court. It is the only part of that act which is not repealed or superseded by the act of 1827, and seems necessary, so far as it is applicable to proceedings in the circuit courts, to supply the deficiency of the existing law.

His compensation.

22. Trial and Evidence.

§ 134. The judges of the superior and inferior courts shall not charge juries with respect to the matters of fact, but may state the testimony, and declare the law. (1)

1807—(19) *Sec.* 5. Judges not to charge on matters of fact.

§ 135. Every person desirous of suffering a nonsuit on trial, shall be barred therefrom, unless he do so before the jury retire from the bar: (2) and no more than two new trials shall be granted in the same cause: and two nonsuits shall be considered equal to a verdict against the party suffering the same.

Ib. Sec. 37. Nonsuits and new trials.

§ 136. In all jury trials, either party shall have the right to a peremptory challenge of four of the jury.

1820—(28) *Sec.* 10. Either party may challenge four of the jury.

§ 137. Whenever suit shall be commenced in any of the courts founded on any writing, whether the same be under seal or not, the court before whom the same is depending, shall receive such writing as evidence of the debt or duty for which it was given; and it shall not be lawful for the defendant or defendants in any such suit, to deny the execution of such writing, unless it be by plea, supported by the affidavit of the party putting in such plea; which affidavit shall accompany such plea, and be filed therewith, at the time such plea is filed; which affidavit may be made before any justice of the peace, or before the clerk of the court where such suit may be depending.

1811—(11) *Sec.* 3. Writing on which suit is founded, to be evidence of the debt, and not to be denied, except by plea and affidavit.

§ 138. Whensoever any suit is depending in any of the courts founded on any writing, under the seal of the person to be charged therewith, it shall be lawful for the defendant or defendants therein, by a special plea, to impeach, or go into the consideration of such bond, in the same manner as if the said writing had not been sealed.

Ib. Sec. 4. Consideration of writing under seal, may be impeached by special plea.

§ 139. All private acts of assembly may be given in evidence, without being specially pleaded, and as printed with the general acts of the legislature.

Ib. Sec. 10. Private acts may be given in evidence without being pleaded.

§ 140. Papers read in evidence to the jury on the trial of any cause, though not under seal, may be carried from the bar by the jury.

Ib. Sec. 11. Papers may be carried from the bar.

§ 141. Interpreters may be sworn truly to interpret, when necessary.

Ib. Sec. 13. Interpreters.

§ 142. All certificates issued in pursuance of any act of congress, by any of the boards of commissioners, register of a land office, or any other person duly authorized to issue such certificate upon any warrant, or order of survey, or to any donation or preemption claimants, for any lands in this territory, shall be taken and received as vesting a full, complete, and legal title in the person in whose favor the said certificate is granted, to the lands therein mentioned, and his, her, or their assigns, so far as to enable the holder of such certificate to maintain any action thereon, and the same shall be received in evidence as such in any court in this territory.

1812—(16) *Sec.* 8. Certificates to be received as evidence of title to lands.

§ 143. When any suit shall be instituted by any person or persons, as assignee or assignees of any bond or other writing, it shall not be necessary for the plaintiff or plaintiffs to prove the assignment or assignments, unless the defendant or defendants shall annex to the plea

1819—(6) *Sec.* 37. Assignment need not be proved, unless defendant files an affidavit of its forgery.

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(1) The judge may lawfully sum up the evidence to the jury, and instruct them hypothetically. Brandon *v.* Snows & Cunningham, 2 *Stewt. Rep.* 255.

(2) The court, unless so directed by statute, cannot order a nonsuit. Taylor's adm'r. *v.* Seaton, *Min. Rep.* 75.

denying such assignment or assignments, an affidavit, stating that such defendant or defendants verily believe, that some one or more of such assignments were forged, or make oath to the same effect in open court, at the time of filing such plea.

1828—(32) *Sec.* 2. Laws of U.S. or other states, may be proved by certificates of secretary of state.

§ 144. It shall be the duty of the secretary of state for the state of Alabama, on application, to give certified copies of any of the acts of the several states, or of the United States, which are now or may hereafter be in his office, and the copy so certified shall be evidence in any court of law or equity in this state. (1)

23. VENUE.

1807—(19) *Sec.* 11. Where personal and other actions are to be commenced and tried.

§ 145. All civil causes and suits to be instituted for determination before the territorial judges, shall be commenced in the circuit court of the county in which the defendant may be found, or if it be a real action, an action of ejectment, or trespass *quare clausum fregit*, then in the county in which the cause of action arose; and all causes and actions so commenced in any circuit court, shall be brought to issue, according to the rules that may be ordained and established for the orderly conducting and management of business in the said courts; and if the said issue be an issue in fact, the same shall be tried by the jurors attending the said circuit court, at the next succeeding term, if there be time for trial thereof, and the same be not continued by order of court; and all causes remaining on the docket of any circuit court, at the rising thereof, shall be continued over of course for trial, at the next succeeding term.

Ib. Sec. 12. Freeholders not to be sued out of the county of their residence.

§ 146. No freeholder of this territory, shall be sued out of the county of his permanent residence, provided the same be within this territory, unless it be in the actions enumerated in the last section; nor shall any person who may reside in this territory, be held to bail if sued out of the district or county of his residence and freehold. (2)

1812—(16) *Sec.* 4. In division or establishment of counties, causes to be transferred.

§ 147. In all cases where, by the division of any county, new counties have been established, and in the establishment of all future counties, all unfinished business in the courts of such county previous to such division, which would be properly cognizable in the courts of such newly established county, whether of suits, probate of matters, or other business, shall be transferred to the proper court of such new counties, to be there acted on and determined as if they had therein originated.

1818—(14) *Sec.* 8. Suit in any county, the plaintiff making oath.

§ 148. Any person or persons may be sued in the county in which he, she, or they may be found, without regard to his, her, or their residence, if oath be made before the clerk issuing the writ, or any justice of the peace, that such person or persons hath or have gone from the county of his, her, or their residence, for the purpose of avoiding service of process in their proper county.

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(1) The acts of congress, as published in the pamphlet acts of the session, may be read on the trial of a cause, without proof that the pamphlet is authentic. White *v.* Saint Guirons, *Min. Rep.* 331.

(2) This does not embrace motions against tax-collectors. Armstrong & Pinkston *v.* The State, *Min. Rep.* 160. It extends to suits before justices of the peace. Read *v.* Coker, 1 *Stewt. Rep.* 22. A plea in abatement, that defendant was a resident citizen of another county when the writ was served, is not sufficient, unless it appear he was a freeholder of such county. Wilson *v.* Oliver, 1 *Stewt. Rep.* 46. A certificate of the register of the land office of the United States, showing a purchase of land, part payment, and an extension of time given for the balance, is sufficient evidence of a freehold, to support a plea in abatement; and in the absence of proof to the contrary, is to be taken as genuine. Cox *v.* Jones & Jones, 1 *Stewt. Rep.* 379. Residence and freehold in another county may be pleaded in abatement and proved, notwithstanding it may contradict the sheriff's return. *Ib.*

§ 149. Judges of the circuit courts within their respective circuits, at or before the first trial term of any suit, civil or criminal,[1] shall have power to change the venue thereof, on good and sufficient cause, set forth and duly supported by oath or affirmation: and when a change of venue shall be allowed in any suit, the trial thereof shall be adjourned under the direction of the judge, to the nearest adjoining county, which is free from the like exception, and the trial of such cause in the court to which it may be adjourned, shall be by a jury of freeholders or householders: *Provided*, That such change of venue shall in no instance be allowed, more than once in the same cause or suit: *Provided also*, That in criminal prosecutions, the right to the change of venue under the provisions of this section, shall be confined to the party prosecuted.

1819—(6) *Sec.* 12. Venue may be changed, on sufficient cause shown.

But one change of venue, in same cause.

In criminal cases, allowed only to the defendant.

§ 150. It shall be lawful for the several courts within this territory, when any real action may be instituted or pending in such courts, to order the change of venue in such action to any adjacent county, on the party wishing such change making affidavit, that he, she, or they verily believe that justice cannot be done in the county where such suit may be pending: *Provided*, That the party opposed to such change of venue, shall have the right to take the testimony of aged or infirm witnesses, in all cases where a change of venue may be prayed, by *dedimus potestatem*, to be directed to any justice of the quorum or of the peace, in the county from whence the said venue may be changed; the party wishing such *dedimus*, previously making an application for that purpose, to the judge who may preside in the judicial district where such suit may be pending, and giving the opposite party sufficient notice of the time and place of taking such testimony; which testimony, in form aforesaid taken, together with the *dedimus*, shall be sealed up by the person by whom the said testimony may be taken, and be directed to the clerk of the court to which the venue may be changed, and shall be read in evidence in the case in which it may be taken, subject to such restrictions and formalities as are now prescribed by law.

1818—(6) *Sec.* 1. Change of venue in real actions may be to any adjacent county, but opposite party shall have *dedimus* to take the testimony of aged or infirm witnesses.

§ 151. When the venue has been changed in any real action, and judgment had and rendered in favor of the plaintiff, it may be lawful, and it is hereby required, that the clerk of the court where such judgment shall be rendered, shall issue the writ of *habere facias possessionem*, in favor of the plaintiff, directed to the sheriff of the county where the action originated, any law, usage, or custom, to the contrary notwithstanding.

Ib. Sec. 2. Writ of *habere facias possessionem* to be issued by the clerk of the court where suit is tried.

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[1] A change of venue in criminal cases may be allowed at any time before trial, or after new trial granted. See "Criminal Law—Change of Venue."

JUDICIAL PROCEEDINGS IN CHANCERY.

1. Equity Jurisdiction.
2. Mode of proceeding in Equity.
3. Change of Venue.
4. Injunctions.

1. Equity Jurisdiction.

Con. Ala. Art. 5, *Sec.* 8. Chancery courts.

§ 1. The general assembly shall have power to establish a court or courts of chancery, with original and appellate equity jurisdiction; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts respectively: *Provided*, That the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

1807—(19) *Sec.* 43. May establish rules.

§ 2. The said courts[1] shall have and exercise all the power, authority and jurisdiction incident to courts of chancery, and may ordain and establish all necessary rules for the orderly conducting of business in equity, and for hearing and taking orders on interlocutory matters in vacation. And the clerks of said courts shall keep the rolls, records, and proceedings in equity, separate and distinct from the proceedings in law in said courts.

Records in equity to be kept distinct.

Ib. Sec. 44. May direct issues in fact to be tried. How tried.

§ 3. The said courts of chancery may direct an issue in fact to be tried whenever they judge it necessary; and such issue shall be tried in the same manner, and by the same jury, and the same mode of proceedings observed in the trial thereof in every respect, as if it were an issue in fact joined in a suit in law in the same court.

Ib. Sec. 45. May issue writs of injunction and *ne exeat.*

§ 4. Each of the territorial judges shall have power and authority to issue writs of injunction, and of *ne exeat,* when the case may require it; but every person shall be discharged from a writ of *ne exeat,* on giving good and sufficient security, and for that purpose, the judge of the court granting such writ, shall endorse thereon, the sum and number of securities required.

Ib. Sec. 46. May issue all usual chancery process, and executions for money decreed.

§ 5. Said courts sitting in chancery, shall have power and authority to order and issue all such process as hath usually belonged to courts of chancery; and in cases where decrees shall be passed for a sum of money, it shall be lawful for execution to issue thereon against the defendant's goods and chattels, lands and tenements, or against the defendant's body, to satisfy such decree and costs, in like manner, and with the same force and effect, as executions may issue on judgments obtained at law in the supreme court of this territory.

Ib. Sec. 48. Costs.

§ 6. Costs in equity shall be paid by either party, at the discretion of the court.

1811—(11) *Sec.* 28. Judges may examine answers in vacation.

§ 7. The judges of the superior courts of law and equity shall have power in vacation to examine all answers to bills in chancery: and if any defendant or defendants have been held to bail, any judge, on application, may, and he is hereby authorized to reduce or discharge such bail taken as aforesaid.[2]

1812—(16) *Sec.* 10. Jurisdiction of gambling considerations.

§ 8. The courts of equity shall have jurisdiction in all cases of gambling consideration, so far as to sustain a bill for discovery, or to enjoin judgments at law.

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[1] The supreme and superior territorial courts. Their chancery powers were transferred to the circuit courts. See hereafter—§ 10.

[2] The 20th section of this act (Dec. 18. 1811,) provides "That so much of the forty-seventh section of the act entitled, 'An Act establishing superior courts, and declaring the powers of the territorial judges,' as authorizes either of the territorial judges to hold to bail any defendant or defendants in suits in chancery, be, and the same is hereby repealed."

§ 9. The superior courts of this territory sitting in chancery, shall, in all cases where a bill is pending, or may be hereafter filed to compel the specific performance of a contract, have power to make a decree, vesting title to any property, real or personal, in the complainant, as fully and effectually as if conveyed by the defendant, in conformity with the contract on which such bill and decree are founded: and a writ shall issue to the sheriff or other officer, commanding him forthwith to put such complainant in possession.

1818—(2) *Sec.* 9. May convey title by decree of specific performance, and award writ of possession.

§ 10. The equity jurisdiction heretofore belonging to the superior courts of law and equity in the territorial government, is hereby vested in the circuit court of the state.

1819—(6) *Sec.* 17. Powers vested in the circuit court.

§ 11. The said court, when a bill praying a review of the proceedings, in which a decree shall have been pronounced, shall be presented, may, upon such bill and the circumstances of the case, as the same shall appear satisfactory, direct the proceedings on such decree to be stayed until a decree on the said bill of review shall be made, or until further order of the said court; or the said court may refuse to grant a stay of proceedings in that case as may seem right: *Provided*, That the said court may, in either of the said cases, direct such security to be given, and in such places, as is usual in cases of injunction, or such other security as may seem reasonable: *Provided*, That no bill of review shall be brought on motion made therefor, except it be within three years from the time of pronouncing such decree; saving to infants, *femes covert*, persons *non compos mentis*, persons imprisoned or beyond seas, a right to move a bill of review, within three years after such disability shall have been removed.

Ib. Sec. 18. Court may stay proceedings, on a bill of review.

May require security.

Bills of review limited to three years.

Proviso.

§ 12. The equitable title or claim to land or other real estate, shall hereafter be liable to the payment of debts by suit in chancery, and not otherwise; and when a bill shall be filed for that purpose, all persons concerned in interest, shall be made parties thereto.

1820—(19) *Sec.* 3. Equitable title to lands, liable by suit in equity.

2. Mode of Proceeding in Equity.

§ 13. The mode of commencing suits in equity, shall be by filing a bill with the clerk of the circuit court of the county in which the suit is instituted, wherein the clerk shall issue a *subpœna ad respondendum*, with a copy of the bill, which shall be served by the sheriff of the county where the defendant resides, or may be found, and returned to the first day of the next term.

1823—(1) *Sec.* 1. Suits commenced by bill. Service on defendant.

§ 14. The defendant shall file his answer or demurrer within thirty days after the service of the *subpœna*, unless within that period he shall obtain further time from the clerk of the said court, or from a circuit judge, on reasonable cause shown, which further time shall not extend beyond the first day of the next term, otherwise the bill shall be taken *pro confesso*, and the complainant, if he deem it necessary, may take an attachment to compel an answer.

Ib. Sec. 2. Defendant to answer or demur within thirty days, or bill taken *pro confesso*, and attachment may issue.

§ 15. No plea or special demurrer shall be filed to any bill or answer, but it shall be lawful for the defendant to embrace all the matter of his plea and demurrer, either general or special, in his answer, and shall have the same benefit thereof as if the same had been pleaded: *Provided*, That the defendant may demur generally to the bill, which if overruled, he shall pay costs thereon, file a sufficient answer, and go to trial forthwith if the complainant requires it, otherwise the bill shall be taken *pro confesso*, and an attachment may issue to compel an answer.

Ib. Sec. 3. No plea or special demurrer to be filed, but defendant may demur generally.

Ib. Sec. 4. Exceptions, when to be filed. To be heard and determined at the first term. Consequences of sustaining or over-ruling exceptions.

§ 16. At the time of filing his answer, the defendant shall also file his exceptions, if he chooses to except to the bill, for scandalous or impertinent matter; and the complainant also, on or before the first day of the term next after the filing of the answer, shall file his exceptions thereto, if he chooses to except for scandal, impertinence, or insufficiency :—All exceptions shall be heard and determined by the presiding judge, in open court, the first term after they are filed, and if filed on the first day of the term, they shall be heard and determined during that term :—If any of the exceptions are sustained, the party filing them shall be entitled to his costs thereon, and a continuance of the suit to the next term if he prays it: if all the exceptions are overruled, the opposite party shall be entitled to his costs thereon, and a continuance if he prays it: *Provided*, That where exceptions filed to the insufficiency of an answer are sustained, the defendant shall forthwith file a sufficient answer and come to trial immediately, if the complainant prays it, unless the court, for good cause, grant further time, otherwise the bill shall be taken *pro confesso* as to the insufficient matter, and an attachment may issue to compel a sufficient answer : *And provided also*, That at any time before the hearing of the cause, the court may grant either party leave to amend his bill or answer, whether exceptions are taken or not.

Ib. Sec. 5. Replication not required. Cause, when to be heard.

§ 17. It shall not be required to file a replication to an answer; and in all cases where the answer is filed ten days before the sitting of the court, or the bill is taken *pro confesso* for want of an answer, the cause shall be heard and determined at that term, if practicable, unless on good cause shown, either party continue the same.

Ib. Sec. 6. Evidence for decree on bill taken *pro confesso.* Order *pro confesso* may be set aside, and attachment discharged.

§ 18. Before a decree is pronounced on a bill taken *pro confesso*, the court shall be satisfied, by sufficient evidence, of the justice of the complainant's claim or demand ; but in all cases, before the hearing of the cause, the defendant shall have leave to set aside the order *pro confesso*, by filing a full and complete answer; and where an attachment may issue for want of an answer, or sufficient answer, or for not obeying the order, or performing the decree of the court, or for disobedience to its process, the defendant shall be discharged therefrom by a compliance at or before the next term.

Ib. Sec. 7. Judge shall render decree in writing.

§ 19. The presiding judge shall render his decree in writing, on or before the adjournment of the court, unless in weighty and difficult cases, in which he may be indulged to the ensuing term.

Ib. Sec. 8. Answers, &c. before whom sworn to.

§ 20. All answers and bills for injunctions, and for writs of *ne exeat* shall be sworn to before any clerk of a circuit court, judge, or justice of the peace.

Ib. Sec. 9. *Ne exeat* may issue on equitable claim. Dissolution of injunctions, &c.

§ 21. It shall be lawful to grant writs of *ne exeat*, not only in cases where a sum of money is due, but also where the complainant has an equitable claim or demand against the defendant: *Provided*, That all writs of injunction and *ne exeat* may be dissolved at the next term after they were granted, on good cause shown. (1)

Ib. Sec. 10. Court may refer matters of account to clerk. Parties may appeal.

§ 22. When it is necessary to the justice of the case to have a reference of matters of account, the court in its decree shall order the same to be referred to the clerk, to ascertain and report thereon, at or before the next term; and from which either party may appeal to the court, having given the opposite party ten days' notice thereof, with the grounds of appeal distinctly set forth, and if the party appealing does not prevail, he shall pay cost thereon; but if a decree cannot be given on the merits of the case, until matters of account between the parties are referred, then the same shall be referred and ascertained before the hearing, under such rules as the court may prescribe. In ascertaining and adjusting accounts, sums and items not exceeding ten dollars each, shall be allowed on the party's oath, unless disproved by sufficient testimony; and sums and items above ten dollars each, shall be proved by sufficient vouchers or evidence.

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(1) Writs of *ne exeat* may be properly granted in the following cases :—

1. Where the demand is exclusively equitable, whether a sum certain be due or not, and the defendant is about to remove beyond the jurisdiction of the court.

2. In aid of an action at law, where the courts of law and equity have concurrent jurisdiction, the defendant being about to remove, and bail not having been obtained.

3. Where the two courts have concurrent jurisdiction, and no action at law, but a suit in equity has been instituted. Lucas *v.* Hickman, 2 *Stewt. Rep.* 111.

Notice of appeal.

Parties allowed to swear to items not exceeding ten dollars.

§ 23. If the defendant in any suit in equity, against whom subpœna or other process may issue, shall not cause an appearance to be entered within such time and in such manner as by the rules of the court the same ought to have been entered, in case such subpœna or other process had been duly served, and affidavit being made that such defendant resides beyond the limits of the territory, or that upon inquiry at his usual place of abode, he could not be found so as to be served with such process, and that there is just cause to believe that such defendant is gone out of the limits of the territory, or otherwise absconded to avoid being served with such subpœna or other process, then, in either case, the court may make an order, directing such defendant to appear at a certain day therein named; a copy of which order shall be published within forty days thereafter, in some gazette regularly published in this territory, for such space of time as the court shall direct, and shall within the time aforesaid, be posted up at the door of the court-house where made; and said court may, at their discretion, direct such order to be published in any gazette in the United States, and for such space of time as they may deem reasonable; and if the defendant do not appear within the time limited by such order, or within such further time as the court shall appoint, then, on due proof of publication as aforesaid, the court may order the plaintiff's bill to be taken *pro confesso*, and make decree thereon, and carry such decree into full effect as in other cases: *Provided*, That proceedings in equity against absent defendants, and decrees made on such proceedings, shall be subject to the restrictions, limitations, and provisos, hereinafter mentioned.

1805—(2) *Sec.* 1. Defendant failing to appear according to the rules of court, and affidavit being made of defendant's absence from the territory, or absconding, court may make an order directing such defendant to appear, to be published in some gazette of the territory, &c., and at discretion of the court, in that of any state; and in case of failure to appear, &c., and on due proof of publication, bill may be taken *pro confesso*, and decree rendered.

Proviso.

§ 24. The complainant shall, before obtaining any decree by virtue of the foregoing section of this act, give good and sufficient security in such sum as the court may direct, to abide such order touching the restitution of the estate or effects to be affected by such decree as the court may make concerning the same, on the appearance and petition of the defendant to have said cause re-heard; and if any decree shall be made in pursuance of this act, against a person residing beyond the limits of the territory, at the time of pronouncing such decree, and such person shall, within two years after making the same, reside within the territory, or become publicly visible therein, then such defendant shall be served with a copy of such decree in a reasonable time after such residence or public appearance shall be known to the complainant; and in case such defendant depart this life within two years after making such decree, and before the service of such copy, then if the heir of such defendant shall have any real estate, whereof possession shall have been given to the complainant, and such heir may be found, or if such heir be a *feme covert*, infant, or person *non compos mentis*, the husband, or guardian of such heir, or if the personal estate of such defendant shall have been levied on, or possession

Ib. Sec. 2. Complainant to give security to abide such order, touching the restitution of estate to be affected by decree, as the court may make on defendant's appearance.

Non-resident defendant appearing within two years after decree, to be served with copy thereof.

In case of defendant's death within two years, his executors or administrators, in certain cases, to be served with a copy in a reasonable time after they are known.

thereof given to the complainant, then the executor or administrator, if any such there be, shall be served with a copy of such decree, within a reasonable time after the death of the defendant, and his heirs, executors, or administrators in this territory shall be known to the complainant.

Ib. Sec. 3. Decree to stand confirmed, unless rehearing is petitioned for within 12 months after notice.

§ 25. If any person or persons served with a copy of such decree, shall not within twelve months thereafter appear and petition to have the cause re-heard, such decree made as aforesaid shall stand absolutely confirmed against the person or persons served with a copy as aforesaid, his, her, or their heirs, executors, or administrators, and all persons claiming under him, her, or them, by virtue of any act done after the commencement of the suit.

Ib. Sec. 4. Such persons may, upon notice, within one year, or without notice, within three years, upon payment of costs, answer the bill and set aside the decree;

§ 26. If any person served with a copy of such decree as aforesaid, shall, within twelve months thereafter, or if any person not so served, shall, within three years after pronouncing such decree, appear and petition to be heard touching the matter of such decree, and pay the costs of suit, such person or persons, his, her, or their representative, or any person claiming under him, her, or them, by virtue of any act done before the commencement of the suit, may be admitted to answer the bill, and such proceedings had, as if no decree had passed.

Ib. Sec. 5. or failing to do so, the decree to stand confirmed.

§ 27. If any person or persons against whom such decree shall be made, his, her, or their heirs, executors, or administrators, shall not within three years next after making such decree, appear and petition to have such cause reheard, and pay costs of suit as aforesaid, such decree made as aforesaid, shall stand absolutely confirmed against the defendant or defendants, his, her, or their heirs, executors, and administrators, and against all persons claiming or to claim by, from, or under him, her, or them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit: *Provided*, That this act shall not be so construed as to authorize proceedings against persons residing out of the territory, unless the ground or cause of action, or the transaction on which the bill may be brought, took place within the territory.

3. Change of Venue.

1822—(27) *Sec.* 1. Venue may be changed where judge has been counsel, or is connected with either of the parties.

§ 28. It shall be lawful for any plaintiff or defendant in any suit in chancery, in any of the circuit courts in this state, to change the venue of such suit in chancery, where it shall appear to the court, that the judge of the circuit in which such suit in chancery is pending, has at any time previous to his appointment as judge, been employed in the suit so pending by either plaintiff or defendant, as counsel in the said suit; or where it shall appear to the court, that the judge of the circuit is connected to the parties interested in such suit by affinity or consanguinity.

Ib. Sec. 2. To be changed to circuit, not liable to the same exceptions, and clerk to transmit full transcript, &c.

All bonds, &c., valid.

§ 29. When a change of venue under the provisions of this act shall be allowed for the reasons above set forth, the judge of the circuit where such suit is pending, shall, on application, change the venue thereof to an adjoining circuit free from the like exceptions; and the clerk of the circuit court where such suit was instituted, shall transmit without delay, to the clerk of the circuit court to which such suit may be changed, a full transcript of all orders, motions, and records entered on his books in relation to the suit so pending, with all the original papers and proceedings in the case; and all bonds and recognizances, and all other matters in relation to the cause in controversy, shall be as valid to all intents and purposes as they would have been, had such change of venue not been made; and the suit so changed shall be placed in the same situation in the court to which it shall be changed, as if the same had been instituted in said court.

§ 30. The decrees, orders, and other proceedings in the case, shall be as binding on the parties concerned in such suit, as if the same had been determined in the court where the suit originated, in every respect whatever.

Ib. Sec. 3. Decrees, &c., to be binding.

4. Injunctions.

§ 31. No injunction shall be granted to stay an execution of a judgment at law, unless the party applying for such injunction, or to be benefited thereby, shall first sign and seal a release of errors in such judgment at law, and file the same in the office of the clerk of the court, in which such judgment shall have been obtained; and whenever an injunction shall be dissolved, damages after the rate of six per centum shall be added to the amount of the judgment, provided, the court be of opinion that the injunction was obtained for delay.

1816—(10) *Sec.* 1. Party applying for injunction to file a release of errors at law. Damages on dissolution of injunction.

§ 32. Where any bill of injunction may be dissolved on an interlocutory order of the courts exercising chancery jurisdiction, and said bill after such interlocutory order of dissolution, shall be set for a hearing; it shall be the duty of the court before whom such order of dissolution may be made, to require of the defendant or defendants to such bill of injunction, bond and security, payable to the complainant or complainants, in double the amount of the sum enjoined on the judgment at law, conditioned to refund the money, interest, and costs to the complainant or complainants, in the event of said judgment at law being perpetually enjoined, on the final hearing of said bill of injunction.

1823—(12) *Sec.* 1. Defendants to bills of injunction required to give refunding bond on their dissolution;

§ 33. The bond and security taken as aforesaid, in the event of said bill of injunction being perpetuated on the final hearing, shall have the force and effect of a judgment, and execution may issue thereon against the principal and security, as on forthcoming bonds for the delivery of property on the day of sale; except that the decree shall be conclusive evidence of a forfeiture of any such bond; and an endorsement on said bond that the same is forfeited shall not be necessary.

Ib. Sec. 2. which bond shall have the force of a judgment, if the injunction is made perpetual.

§ 34. Every bond executed for the purpose of obtaining an injunction shall, on the dissolution of the said injunction, have the force and effect of a judgment; and it shall be lawful for the party or parties, whose judgment may have been enjoined, to take out execution against all the obligors in the bond, for the amount of the judgment which shall have been enjoined, together with lawful interest thereon, and also the costs incurred in and about the said chancery proceedings.

1826—(22) *Sec.* 1. All bonds given to obtain injunctions, to have the force of judgments on their dissolution.

JUDICIAL PROCEEDINGS—By Justices of the Peace.

1. Justices' Jurisdiction.

§ 1. All debts and demands not exceeding fifty dollars, for a sum or balance due on any specialty, note, bond, cotton receipt, contract, or agreement in writing, or for goods, wares and merchandise, sold and delivered, or for work or labor done, or for money lent, or for specific

1814—(17) Justices to have jurisdiction of sums not exceeding fifty dollars.

May issue warrant.

articles, or for any sum or balance due either by written or verbal contract, or assumpsit in any case not sounding in damages merely, are hereby declared to be exclusively cognizable and determinable by a justice of the peace. Any such justice is hereby authorized, on complaint made to him, to issue his warrant, capias, summons, or attachment, as the case may require, returnable at a certain time and place therein mentioned, not less than ten nor more than thirty days from the time of issuing the same, and on return thereof, proceed to hear and determine the case on the merits, if the parties appear; give judgment by default if the defendant fail to appear and contest the plaintiff's demand, or enter judgment of nonsuit against the plaintiff if he fail to appear and prosecute his claim, and issue execution against the person or goods and chattels of the party against whom judgment is so entered, for the debt and costs, or costs alone, as the case may require, returnable at a certain time and place therein mentioned, not less than twenty, nor more than thirty days from the time of issuing the same; but such justice may, by consent of the parties, or on good cause shown by oath or affidavit, adjourn the trial of any cause to any time not exceeding ten days.

1827—(36) *Sec.* 1. To have jurisdiction of contracts for the payment of specific articles, &c., not exceeding fifty dollars.

§ 2. All contracts for the payment of specific articles, or for the performance of services, when the value of the article contracted for, or of the services to be performed, does not exceed fifty dollars, shall be cognizable and determinable by justices of the peace, subject to the same rules and regulations as are now provided by law for the trial of causes before justices of the peace. (1)

2. Process.

1814—(7) *Sec.* 5. Process to name time and place of trial. When executed, and constable's return. Summonses for witnesses.

§ 3. All process issued by a justice of the peace, shall name the time and place of trial, and shall be served five days[1] previously thereto, and any such justices respectively, shall issue all summonses for witnesses, and compel their attendance, under a penalty not exceeding ten dollars, and the constable shall endorse on the back of all process how he has executed the same.

1814—(17) *Sec.* 2. To be under hand and seal of justice. Justices to make entries of their proceedings, &c.

§ 4. All warrants, or other precepts issued by any justice of the peace, shall be under the hand and seal of such justice, and shall be directed to the officer whose duty it is to execute the same; and the justices shall cause fair entries to be made in books to be by them provided for that purpose, of the names of the plaintiff and defendant, in any suit brought before them, with the debt and costs adjudged, and the time when the warrant issued, was made returnable, and when judgment was given, together with the return made upon all such process. (2)

Ib. Sec. 14. Process to be returnable on a day certain, giving reasonable time.

§ 5. Every warrant, attachment, summons, subpœna, or other process issued by a justice of the peace, shall be returnable at a day certain, giving a reasonable time for attendance;[2] and if any witness duly summoned, fail to appear agreeably to the command of such summons or subpœna, he or she so failing shall be called out on such summons or subpœna, and forfeit the sum of ten dollars with costs, for the use of the county, and for which the justice shall immediately enter judgment by default against said witness, to be made final in case said witness do not attend within ten days after notice served on said witness, of such judgment by default, and after the rendition of such judgment, and show cause to the satisfaction of said justice, on oath or affidavit, for such default.

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[1] But see § 5.

[2] Warrants issued for the breach of any by-law of an incorporated town, may be made returnable forthwith. See "Incorporated Towns."

(1) Justices of the peace have jurisdiction for the recovery of the value of specific articles bailed and not re-delivered according to promise. Spann *v.* Boyd, 2 *Stewt. Rep.* 480. Where more than $50 is due on a contract, the creditor may relinquish all over that amount, and sue for $50 in a justice's court. King *v.* Dougherty, 2 *Stewt. Rep.* 487.

(2) Proceedings before justices (except on writ of forcible entry, &c.) are not records. Gayle *v.* Turner, *Min. Rep.* 204.

Judgment by default against witnesses, to be made final after ten days' notice.

§ 6. It shall not be necessary for justices of the peace, to annex a copy of the note or account to any warrant, summons, or capias, but to endorse thereon the cause of action.

1816—(1) *Sec.* 3. Cause of action to be endorsed on warrant.

§ 7. It shall not be lawful for any sheriff or coroner, to execute process in civil cases issued by any justice of the peace, except attachments, [a]*and precepts of forcible entry and detainer,*[1] and where any civil process, issued by any justice of the peace, is executed by any sheriff or coroner, (except as aforesaid,) the same shall be null and void and of no effect.—No judgment thereon shall be rendered, any law to the contrary notwithstanding.

1823—(30) *Sec.* 2. [a 1826—(13) *Sec.* 2.] Process not to be served by sheriff or coroner, except, &c.

§ 8. Every process issued by a justice of the peace, whereby any person or persons are required to answer before such justice, for any debt or debts which he, she, or they may owe, shall be returnable to some place either in the beat where the defendant or defendants reside, or in the beat where the debt or debts were contracted; and if there should be no justice in the beat where the defendant or defendants reside, or the justice, from interest or other legal objection, is incompetent to try the cause, then the process may be returnable to some place in any adjoining beat; and if there should be several defendants, the process may be returnable to some place in any beat, in which one of them may reside; and every process issued contrary to the provisions of this act, shall be void on motion and proof made by the defendant or defendants thereof, to the satisfaction of the justice trying such cause; and in every case by appeal in the circuit or county court, the process shall be adjudged void on plea of the defendant or defendants, provided that subpœnas for witnesses shall issue as heretofore: *Provided*, That nothing in this act contained, shall have force or effect in the county of Mobile.

1830—(21) *Sec.* 1. To be returnable to some place in the beat of the defendant's residence, or where the debt was contracted, or if justice be incompetent, to some adjoining beat.

Process not so returnable, void, on motion and proof.

Subpœnas to issue as formerly.

3. Bail.

§ 9. In case it becomes necessary to issue a *capias*, the officer arresting any person by virtue thereof, may take a bail bond of the defendant, with security, in double the amount of the debt, payable to the plaintiff, conditioned for his or her appearance on the day of trial; and in case he or she fail to appear, judgment shall be entered against him or her; but judgment shall not be entered against the bail, until an execution against the defendant shall have been returned by the officer, that the defendant is not found within his county, and until notice shall have been served on such bail, requiring him or her to bring in the body of the principal: but in case the defendant cannot give bail, or in case the bail surrender him or her before the day of trial, he or she shall be committed to the jail of the county, until he or she satisfy the demand against him or her, or be otherwise discharged by law.

1814—(17) *Sec.* 13. Bail bond may be taken.

Bail, how made liable.

Defendant, unable to give bail, or surrendered by his bail, to be committed to jail.

NOTE.—Bail bonds taken by constables, shall be payable to the plaintiff in the action. See "Bail in Civil Cases,"—§ 19.

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[1] See "Forcible Entry and Detainer."—Note 1, to page 203.

4. Trial and Judgment.

1814—(17) *Sec.* 4. Justice to issue subpœnas for witnesses in the county, or commission to take depositions out of the county.

§ 10. The justice before whom any cause is depending, shall issue all subpœnas for witnesses who reside within his county, which the parties or either of them require; and in case any witness reside without the limits of his county, such justice may, on satisfactory evidence shown him, that sufficient and reasonable notice has been given to the adverse party, of the time and place of taking his or her deposition, issue a commission to some justice of the peace, where such witness resides, to take his or her deposition, which deposition so taken and returned under the hand and seal of such justice, shall be read in evidence; and the justice from whose judgment any appeal is taken, shall issue all subpœnas for witnesses, which either of the parties may require, returnable to the next superior court after such appeal is taken.

On appeal taken, justice to issue subpœnas returnable to court.

Ib. Sec. 10. Parties may be examined on oath, if amount does not exceed twenty dollars.

§ 11. If the sum claimed be twenty dollars or under, the justice of the peace may, at the trial of the cause, proceed to examine plaintiff and defendant on oath, and give judgment as to him the right of the cause may appear; and in all cases where the sum of money claimed exceeds twenty dollars, the oath of neither party shall be admitted, but the same evidence shall be required by every justice of the peace, as is required in the superior court.

Ib. Sec. 30. When justice dies, &c., nearest justice to take and proceed with unfinished business.

§ 12. When any justice of the peace dies, resigns, or removes from the county, or is removed from office, his papers shall be transferred to the nearest justice to his place of residence, who shall finish the business of said justice in the same manner as business originally commenced by him.

1827—(37) *Sec.* 1. Judgment to be given for defendant, if his off-set is greater than the plaintiff's claim, but defendant shall credit his account.

§ 13. In any trial before a justice of the peace, in civil cases, when the defendant's off-set is satisfactorily proven to be greater than the plaintiff's claim, the justice shall give judgment in favor of the defendant for the overplus, provided it does not exceed fifty dollars. And if the overplus should exceed fifty dollars, then the justice shall give judgment in favor of the defendant for costs: *Provided*, The defendant will enter a credit on his claim for the amount of the plaintiff's demand, or give the plaintiff a receipt for so much; *And provided further*, That no claim shall be allowed as a set-off, unless it belonged to the defendant at the time he was sued.

What admitted as set-off.

1811—(13) *Sec.* 2. Judgment final on the merits, to bar recovery for the same cause of action.

§ 14. Whenever any suit brought before a justice of the peace has been finally decided on its merits by such justice, it shall be a bar to a recovery for the same cause of action brought before any other justice of the peace; and all justices of the peace before whom any trial shall have been had as aforesaid, shall, on application of either of the parties, or their legal representatives, or any other person in his, her, or their behalf, grant a transcript of the record of such judgment in favor of such party, which shall be sufficient evidence to bar any recovery before any other justice of the peace as aforesaid, for the same cause of action.

Justice required to give transcript on application.

5. Execution.

1814—(17) *Sec.* 11. Stay of execution.

§ 15. When any judgment is rendered by any justice of the peace, he shall, if the applicants give bond and security in double the amount of such judgment, including interest and costs, for the payment of the same, at the expiration of the stay given by law, give a stay of execution, [a]*on all sums not exceeding twenty dollars, thirty days, and on all sums over that amount, sixty days;* and in case the money be not paid at the expiration of such stay, execution shall issue against the principal and security, or either of them, for the principal, interest, and costs, due on such judgment; and such judgments, and all other judgments rendered by justices, shall bear legal interest from the time of their rendition until paid; and all executions and summonses for garnishees in attachment shall issue to the county where such principal, security, or garnishee may reside, and shall be duly executed and returned, by any sheriff, coroner, or constable of the county to which the same is sent.

[a 1816—(1) *Sec.* 1.] At expiration of stay, execution to issue against principal and security. Judgment to bear legal interest.

§ 16. In order to give either party an opportunity to appeal, no execution shall issue on the judgment of any justice, until five days after rendering such judgment, unless the plaintiff, his or her agent or attorney, will make oath, that he or she has just reasons to believe that the plaintiff will be in danger of losing his or her demand by such delay, in which case execution shall issue immediately; but shall not deprive him or her of the right of appeal within the time prescribed by law.

Ib. Sec. 12. No execution to issue, until five days after rendition of judgment, unless the plaintiff make oath.

Note.—See this Title—§ 1: also the several divisions of the Title—"Executions." When justices are allowed to issue against the successful party for his own costs,—See "Judicial Proceedings at Common Law,"—§ 23.

6. Motions against Justices.

§ 17. Any justice of the peace in this state, who shall fail or refuse to pay, on application, any moneys received or collected by virtue of his office, to the plaintiff, his, or her agent, or attorney, shall be liable to have a judgment entered against him upon motion before any other justice of the peace, of the county in which such defaulting justice may reside, for the debt and interest so received or collected, with ten per cent. a month damages thereon, a written notice of such motion having been given to such defaulting justice three days previous to the trial of the motion, provided the amount of the judgment so rendered shall not exceed fifty dollars; and in all cases where the amount exceeds that sum, the same remedy shall be had before the county or circuit courts, with damages thereon as aforesaid.

1829—(14) *Sec.* 6. Justice defaulting may be moved against before any other justice. If amount exceed fifty dollars, remedy by motion in the circuit or county court.

JURORS AND JURY.

§ 1. The right of trial by jury shall remain inviolate.

Con. Ala. Art. 1. *Sec.* 28.

§ 2. No person under the age of twenty-one years, or above the age of sixty, nor any person continually sick, or who may be diseased at the time of the summons, nor any person who has been convicted of any felony, perjury, forgery, cheat, or conspiracy, or offence, shall be summoned on a jury.

1807—(33) *Sec.* 2. Who disqualified as jurors.

§ 3. It shall be lawful for the court to fine any *talesmen*, who, being present when they are called, do not appear in court; or who, after appearance, wilfully withdraw themselves during the same day.

Ib. Sec. 3. Court may fine defaulting talesmen.

1811—(3) *Sec.* 1. Sheriff to furnish clerk with a list of freeholders and householders, biennially.

§ 4. The sheriff of every county within this territory, shall, every two years, furnish to the clerk of the superior court of his county, a list of the freeholders and householders within his county; which list shall be filed in the office of the clerk of the court to which the same is furnished; and the names so returned, shall be put in a box to be kept by the clerk for that purpose.

Ib. Sec. 2. Jurors, how drawn. *Venire facias.* Mode of summoning jurors. Juror defaulting, liable to fine of twenty dollars. May be remitted on cause shown. a *See* § 14.

§ 5. There shall be drawn by the clerk and sheriff of the superior courts within this territory, in open court, one by one, after the names are shaken together, thirty-six[1] jurors, which shall be entered on the minutes of said court; and the clerk shall issue a *venire facias* for the jurors so drawn, returnable to the next term of said court; and it shall be the duty of the sheriff, at least five days before the term, to summon the jurors so drawn, either by summoning them personally, or leaving a written notice at their usual place of abode, to attend accordingly; and every juror who being summoned as aforesaid, shall not attend, shall be liable to a fine not exceeding twenty dollars, unless a good cause for his nonattendance be shown on or before the first day of the next regular term of the court, after such nonattendance: *Provided,* That if good cause be shown by such delinquent juror, the fine imposed shall be remitted without the payment of costs.[a]

Ib. Sec. 3. Grand jury to be drawn by lot; residue to serve as traverse jurors. Freeholders to try land titles. b *See* § 11. By-standers to be summoned to complete the pannel.

§ 6. From the whole number of jurors attending the superior court of any county, and summoned as aforesaid, there shall be drawn by lot, not less than thirteen, nor more than eighteen, who shall constitute the grand jury for the term of the court to which they are summoned, and the residue shall serve as traverse jurors during such term: *Provided,* That traverse juries where the title of land is in issue, shall be composed of freeholders;[b] and that when from challenges or other causes, there shall be a defect of jurors, the sheriff shall, by order of the court, return a sufficient number of qualified by-standers to complete the pannel; but, if the sheriff be interested, the return of qualified by-standers shall be made by such disinterested person as the court shall appoint.

Ib. Sec. 4. Names drawn to be put into another box. Fraud in clerk or sheriff punished.

§ 7. After they have drawn from the jury-box the number of jurors required by this act, the names so drawn shall be put into another box, to be kept by the clerk of the court for that purpose, where they shall remain until the whole of the names are drawn out of the jury-box first mentioned, when they shall again be put in the box from which they were drawn; and if the clerk or sheriff shall use any fraud, collusion, or partiality in drawing jurors, such clerk or sheriff shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Ib. Sec. 5. Jury-boxes.

§ 8. The jury-boxes aforesaid, shall be furnished by the different clerks, and secured with sufficient locks, to which no person but the clerk and sheriff in drawing the jury shall have access, and the same shall be a county charge.

Ib. Sec. 6. When from any cause the superior courts have failed to draw the number of jurors required, sheriff and clerk to draw.

§ 9. Whenever any superior court shall not have been holden in any county in this territory, as required by law, or if when held, they should neglect to draw the number of jurors required, the sheriff and clerk of the court where such failure may happen, shall, in presence of one of the justices of the quorum, at least thirty days previous to the next term of said court, proceed to draw one by one from the jury box, the number of jurors required for said court; and if any justice of the quorum shall refuse or neglect to attend for the aforesaid purpose, having been by the sheriff thereunto required, then it shall be the duty of the clerk and sheriff to draw the same, and the clerk shall issue a *venire facias* for the jurors so drawn, as if the same had been done in open court.

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[1] Forty-eight jurors for the first week, and twenty-four for each additional week the court may continue in session.—See hereafter 1823—(32).—The mode of selecting jurors pointed out in this act has been materially altered by a later law, but is retained, inasmuch as it becomes of force, on the failure of the judge of the county court, commissioners, &c. to perform the duty assigned them.—See § 23.

§ 10. If at the time any jurors are drawn by lot from the jury-box as directed by this act, it shall satisfactorily appear to the officers drawing the same, that the persons drawn, or any of them, have removed from the county, or are deceased since the jury list was made out, then, in such cases, the tickets so drawn shall not be included in the number of jurors directed by this act to be drawn, but they shall proceed to draw other jurors until the number is complete, as directed by law.

Ib. Sec. 7. Jurors, in case of death or removal, how supplied.

§ 11. All persons who have made the first payment on purchase of lands from the United States, together with donation and preemption claimants, shall be deemed and held to all the purposes of this act, freeholders.

Ib. Sec. 8. Certain persons to be deemed freeholders.

§ 12. The clerks of the superior courts shall, on the first day of each term, administer the following oath to the traverse jurors, who shall be attending on said court, to wit: "You and each of you do solemnly swear, (or affirm as the case may be,) that you will well and truly try all issues which shall be submitted to you, and left to your decision by the court, during the present term, and true verdicts give according to the evidence: so help you God." Which oath or affirmation shall authorize the said jury to try all issues that may be submitted to them, during that term of the court; and talesmen, if any be summoned, shall in like manner take an oath to try all issues which may be submitted to them during the day.

1814—(6) *Sec.* 1. Traverse jurors to be sworn for the term, and talesmen for the day.

§ 13. Each grand juror, and juror of the original pannel shall be entitled to receive [a]*one dollar per day, for each day's attendance at said courts; and four cents per mile in going to, and returning from said courts, and ferriages:* which shall be paid out of any moneys in the county treasury, on the certificate of the clerk of his having served as such, [b]in which shall be stated the number of days which such person attended as a juror, and the sum to which he is entitled, which certificate the clerk of said court is hereby required to issue accordingly:—and in case there should not be funds in the county treasury for the payment of such demands, the certificate of such juror shall be receivable by the collector of taxes for county purposes, in their respective counties.

1820—(28) *Sec.* 12. [a 1823—(32) *Sec.* 5.] Jurors' compensation. [b 1815—(5) *Sec.* 1.] How paid.

§ 14. It shall be lawful for any defaulting juror, on a *scire facias* made known to him, to make his excuse in writing, on oath, at the return term of said *scire facias*, on any day of the term, and if it shall appear to the court a sufficient excuse is rendered, the defaulting juror shall be discharged without payment of costs.

1821—(32) *Sec.* 1. Defaulting jurors may render excuse on oath in writing,

§ 15. Nothing in this act shall be so construed as to prevent any defaulting juror from giving testimony *vivâ voce* in open court, touching his excuse for nonattendance.

Ib. Sec. 2. or *viva voce* in court.

§ 16. From and after the passage of this act, there shall be drawn in the mode now prescribed by law, forty-eight jurors, in each county in this state, where the circuit court shall sit more than one week, who shall be summoned to attend on the first day of the term of the court, and who shall serve during six days, and shall then be discharged.

1823—(32) *Sec.* 1. Where court sits more than one week, forty-eight jurors to be drawn for first week;

§ 17. At the same time of drawing jurors mentioned in the first section of this act, there shall be twenty-four other jurors drawn, who shall be summoned by the sheriff to attend on the first day of the

Ib. Sec. 2. Twenty-four

jurors for the second week,

second week of the term; who shall also serve six days, and be then discharged.

Ib. Sec. 3. and twenty-four for each additional week.

§ 18. Where any of the circuit courts shall continue in session for a longer term than two weeks, twenty-four jurors shall be drawn and summoned in like manner, to attend each week the court may so continue in session.

Ib. Sec. 4. Forty-eight jurors where court continues only one week.

§ 19. There shall be drawn in the mode now prescribed by law, forty-eight jurors in each county in this state, where the circuit court shall sit for one week; who shall be summoned to attend as now prescribed by law.

Ib. Sec. 7. Talesmen detained more than one day on same issue, to be paid.

§ 20. All talesmen who shall serve more than one day on the same issue, shall be entitled to prove their service, and receive the same *per diem* pay that is now allowed to those of the original *venire facias.*

1826—(21) *Sec.* 1. Grand juries, when discharged.

§ 21. The grand jury empannelled for any county, shall not be detained more than four days, unless cause be shown to the court for such detention.

1826—(30) *Sec.* 1. Judge of county court, commissioners, &c., to select from list of freeholders and householders, persons qualified to serve on juries.

§ 22. Immediately after the sheriff of any county shall have returned to the clerk of the circuit court, in and for such county, the list of freeholders and householders within his county, it shall be the duty of the judge of the county court for said county, the commissioners of revenue and roads, the clerk of the circuit court, and sheriff of the said county, to assemble at the court-house of said county, on a day to be appointed by the clerk of said circuit court, and to select from the list of freeholders and householders, returned by the sheriff, such persons as they, or a majority of them, may deem qualified to serve on juries, and the names of the persons so selected, shall be put into a box to be kept by the clerk for that purpose; and the persons who shall be selected in manner aforesaid, shall be liable to serve on juries, and shall be chosen in the manner now prescribed by law.

Ib. Sec. 2. Clerk to give notice.

§ 23. It shall be the duty of the clerk of the circuit court in each county, immediately after the sheriff shall have returned to him a list of the freeholders and householders, to give notice of the time by him appointed, to the persons who are by this act required to assemble;

Should the judge, &c., fail, clerk and sheriff to draw jury as formerly.

and if in any county, the judge of the county court, the clerk of the circuit court, the sheriff of the county, and the commissioners of revenue and roads, shall fail to select persons to serve on juries in the manner directed by this act, the juries for such counties shall be chosen in the manner prescribed by law, prior to the passage of this act.

1826—(31) *Sec.* 1. Where jurors have not been drawn, or fail to attend, a jury may be impannelled forthwith.

§ 24. Where it shall appear that jurymen have not been drawn and summoned in the manner prescribed by law, or do not attend, the court may direct the sheriff, or other attending officer, in case of his absence or inability to serve, to empannel a jury instanter of such persons as are by law qualified to serve on juries, and can be conveniently summoned; and may, from day to day, empannel juries of the by-standers, for the despatch of the business before the court.

1828—(10) *Sec.* 1. Where term has been extended, jury may be continued throughout.

§ 25. In all cases where the term of holding the circuit courts for any county in this state has been by law extended, and no provision made for having a jury in attendance, it shall be the duty of the judge holding such court, if need be, to continue the jury in attendance until the end of the term.

1833—(14) *Sec.* 1. Jurors for the county court. Their compensation and liabilities.

§ 26. The judge of the county court, the clerk of the circuit court, and the sheriff of the county, shall cause to be drawn twelve persons, who shall be summoned to attend as jurors at each term of the county court; which jurors shall be drawn and summoned in the same manner, and shall receive the same compensation, and be subject to the same liabilities as jurors who are summoned to attend the circuit courts.

§ 27. Nothing in this act shall prevent the sheriff from summoning tales jurors, when necessary, in addition to the original pannel, as authorized by the first section of this act; nor shall anything herein contained be construed to extend to any county now specially provided for by law.

Ib. Sec. 2.
Talesmen.
Proviso.

§ 28. When the validity of any will shall be contested in any county court, it shall be the duty of the judge of said court, at the request of either party, to cause fifteen jurors to be drawn and summoned for the trial of such contest in the same manner that jurors are drawn and summoned for the circuit courts; and if, out of the number so drawn and summoned, a sufficient number shall not appear, or if by challenges a sufficient number should not be left to form a jury, the sheriff shall be directed to summon instanter, a sufficient number from the by-standers.

1833—(17)
Sec. 1.
Jurors in county court when validity of will is contested.

§ 29. The jurors drawn and summoned under this act, shall each be entitled to the sum of seventy-five cents per day for every day they may attend, to be paid by the successful party, before the verdict shall be recorded: and to be afterwards taxed in the bill of costs, and collected as the other costs.

Ib. Sec. 2.
Their compensation.
How taxed.

JUSTICES OF THE PEACE, AND CONSTABLES.

§ 1. A COMPETENT number of justices of the peace shall be appointed in and for each county, in such mode, and for such term of office, as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

Con. Ala.
Art. 5.
Sec. 10.
Appointment of justices.
Jurisdiction.
Appeals.

§ 2. There shall be elected by the qualified electors within the limits of each captain's company in the several counties in this state, two justices of the peace and one constable, who shall hold their offices for and during the term of three years [a]from the time of such election, and until their successors shall be duty qualified:—which elections shall be holden by the commanding officer of each company, and two freeholders or householders as he may appoint, on the first Monday of March next. And it shall be the duty of the persons superintending the elections as aforesaid, to make return of the persons elected, to the clerk of the county court, [b]stating how the vacancy occurred, if to fill a vacancy, or that the appointment is an original one, and the clerk shall certify the same to the governor for commissions.

1822—(28)
December.
[a 1827—(9) *Sec.* 3.]
Two justices and one constable to be elected in each captain's beat, once in three years.
[b 1828—(24) *Sec.* 2.]

§ 3. It shall be the duty of each commanding officer, at the expiration of every term of three years from the first day of March next, to hold an election for two justices of the peace and one constable, as prescribed in the first section of this act.

Elections every third year.

§ 4. It shall be the duty of each commanding officer, whenever any vacancy occurs in his company, by death, resignation, or otherwise, in the office of justice of the peace or constable, immediately to notify his company of the same, and call them together by advertisement, giving ten days' notice, for the purpose of holding an election to fill such vacancy; which election shall be holden by the commanding officer aforesaid, and two freeholders or householders, as he may appoint; [c]and the person elected shall hold his office for the residue of

In case of vacancy, captain to give ten days' notice, and hold election.
[c 1827—(9) *Sec.* 2.]

Election for residue of official term. [a 1833—(18) Sec. 1.] Penalty against captain for neglect to hold election.

the time for which his predecessor was elected; [a]and if any captain or commanding officer, shall fail or neglect for the space of one month to cause the said election to be held as required in this and the preceding section, he shall be liable to a penalty of twenty dollars, to be recovered before any justice of the peace of the county, by any one who will sue for the same; which penalty may in like manner be recovered against him at the expiration of each period of one month, computing from the first recovery, so long as an election for justice of the peace or constable shall be deferred by his neglect.

1829—(3) *Sec.* 1. Justice or constable exercising his office after removal from the beat, subject to penalty of forty dollars.

§ 5. If any person who may have been, or may hereafter be elected to the office of justice of the peace or constable, for any county in this state, and may thereafter move out of the captain's beat in which he may have been elected, after such removal shall discharge any act or duty pertaining or belonging to any such office, by reason, or under pretence of color or right to act in said office, by reason of having been so elected as aforesaid, such person so offending against the provisions of this act, shall forfeit and pay the sum of forty dollars, for every act so illegally done and performed by him, to be recovered by action of debt, before any justice of the peace of the proper county; one moiety to the use of the party aggrieved, and the other to the use of the poor of the proper county, with costs of suit: *Provided*, That the provisions of this act shall not be construed to apply to justices of the peace and constables of the city of Mobile, who leave the city during the summer months for their health.

Not to apply to justices and constables of Mobile.

1807—(3) *Sec.* 2. In case of vacancy, justice may appoint a constable till filled.

§ 6. Any justice of the peace may, in cases where there is no constable in his district, either from death, removal, or otherwise, authorize some person to execute the duties of constable until such vacancy is filled.

Ib. Sec. 3. Duties of constable.

§ 7. It shall be the duty of the constables of the several counties to serve all warrants, summonses, executions, and other process to them directed by lawful authority, agreeably to the tenor thereof, and make due returns of the same: and if any constable shall fail to execute and make return, or to pay to, or account with any person for whom he may have received money, or to return the same to the justice issuing the warrant or execution, within ten days after the receipt thereof, the person so injured as aforesaid may, upon application to any justice within the district, obtain a warrant against him, and such justice shall, upon proof thereof, award judgment and excution for the same, and all costs against such constables, and also fine him for such abuse, in a sum not exceeding ten per cent. on the amount so withheld; and in case of neglect or refusal to serve and return any warrant or summons as aforesaid, may fine the constable so offending in a sum not exceeding the sum due by the defendant.

How made liable for defaults.

Ib. Sec. 18. Justice, on emergencies, may depute person to execute process.

§ 8. In case of emergency, any justice may authorize some reputable person to execute a process, although not commissioned as aforesaid, and without giving bond and security.

1819—(14) *Sec.* 3. Constable to give bond.

§ 9. It shall be the duty of the constables elected in the several counties in this state, before they enter on the discharge of the duties of their office, to enter into bond with sufficient security, to be approved of by the justice or chairman of the county courts respectively, payable to the governor for the time being and his successors in office, in the sum of one thousand dollars, for the faithful performance of the duties of their office; and every constable failing to give bond as herein directed, shall forfeit and pay, for every act he shall perform as constable, the sum of fifty dollars, to be recovered before any court of competent jurisdiction, one-half to the use of the person who may sue for the same, and the other half to the use of the county in which

Penalty of fifty dollars for every official act without bond.

he may be so elected; and said constables shall annually renew their bonds, or on failure therein, the chief justice or chairman as aforesaid, respectively, shall give notice thereof to the commanding officer of the district for which the defaulting constable has been elected, who shall proceed to elect another person in his place, in the same manner as hereinbefore provided in case of vacancy.[1]

Bond to be renewed yearly, or judge of the county court to notify commanding officer of vacancy.

LAWS.

§ 1. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

Con. Ala. Art. 1, *Sec.* 15. Laws, how suspended.

§ 2. No *ex post facto* law, nor law impairing the obligation of contracts, shall be made.

Ib. Sec. 19. *Ex post facto* laws.

§ 3. All laws and parts of laws now in force in the Alabama territory, which are not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this state, until they expire by their own limitation, or shall be altered or repealed by the legislature thereof.

Ib. Schedule, Sec. 5. Territorial laws confirmed.

§ 4. Within five years after the adoption of this constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged under proper heads, and promulgated in such manner as the general assembly may direct; and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years.

Ib. Art. 6, *Sec.* 20. Laws to be digested and promulgated every ten years.

§ 5. The digest of the statute laws of this state made by John G. Aikin, is hereby established; and all laws of a general and public nature passed previous to the present or late called session of the legislature, and not included in said digest, (except the laws relating to county boundaries,) are hereby repealed from and after the first day of January next.

1833—(43) *Sec.* 1. Aikin's Digest established. Repeal of laws not included.

§ 6. There shall be printed and bound three thousand copies of the digest of the laws of this state, which, when completed, shall be disposed of, and distributed in the manner following, to wit: After reserving fifty copies in the office of the secretary of state for the use of the members of the general assembly, to the secretary of state of the United States, four copies; to the executive of each of the states of the Union, one copy; to the governor of this state, the comptroller, treasurer, secretary of state, each of the judges of the supreme, circuit and county courts, one copy; to each of the clerks of the circuit and county courts, one copy, to be kept by them for the use of their respective courts in their respective counties; to the attorney general, and each of the solicitors of the state, one copy; to each justice of the peace, one copy, who shall receive the same upon application to the clerk of the county court of the county in which he resides, and shall execute and deposit with the clerk aforesaid, his receipt, that at the expiration of his term of service, or at the time he shall cease to exercise the duties of his office, he will return the same to the clerk of the county court, which receipt shall be filed in the office of the clerk of the county court of his county; the residue of the said copies shall be sold at the price of two dollars and fifty cents per copy, in the manner following: There shall be appointed by the governor in each county in this state suitable agents to dispose of the same; and

Ib. Sec. 4. 3000 copies to be printed. How distributed.

Justices receiving Digest to give bond.

Governor to appoint agents to sell.

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[1] The duties imposed on constables by this act, and not included under this title, will be found under the heads of "Executions," and "Judicial Proceedings by Justices—Bail."

Agent's bond.

each agent shall give bond payable to the governor and his successors in office, to be deposited in the office of the secretary of state, conditioned to account to the state for all moneys which he may receive from the sale of said books, and pay the same into the state treasury.

Ib. Sec. 5. Other matters to be included in the Digest.

§ 7. "An Act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states;" the Declaration of Independence; the Constitution of the United States, and of the state of Alabama, shall also be printed and bound up in said digest.

Ib. Sec. 7. Secretary of state to distribute.

§ 8. So soon as said work is completed, it shall be the duty of the secretary of state, to cause it to be distributed as the laws and journals now are.

Note.—The comptroller is required to have the revenue laws printed and distributed every year, immediately after the adjournment of the general assembly. See "Financial Department,"—§ 15.

Laws of other states, and of the United States, how authenticated:—See "Judicial proceedings at Common Law—Trial and Evidence." Private acts may be given in evidence from the printed statute book, without being specially pleaded:—See the same title.

LAWS AND JOURNALS.

1822—(15)
a 1833—(6)
Sec. 1.
State printer's election and term of service.

§ 1. There shall be a state printer elected annually, by a joint vote of both houses of the general assembly, ᵃwhose term of service shall commence on the eighteenth day of January, in each and every year, and shall continue for twelve months.

Ib. Sec. 3.
His bond.

§ 2. Before entering on the duties of his or their station, he or they shall enter into bond payable to the governor of the state, and his successors in office, with at least two approved sureties, in the penal sum of five thousand dollars, conditioned in substance, as follows: "The condition of the above obligation is such, that whereas A. B. has been elected state printer for the state of Alabama, for one year, from and after the eighteenth day of January: Now, if the said A. B. shall well and truly perform all the duties which, by law, appertain to the office aforesaid, during the time for which he was elected, then the said obligation to be void, else to remain in full force and virtue;" which bond shall be deposited in the office of the secretary of state.[1]

1823—(15) &
1823—(39) &
1833—(2)—
consolidated.
State printer to print the laws and journals, and whatever may be necessary for the general assembly and state officers.

§ 3. It shall be the duty of the printer so appointed, to print and publish two thousand two hundred copies of the acts and resolutions, one thousand copies of the journal of the house of representatives, and seven hundred and fifty copies of the journal of the senate; and to do all the printing that may be ordered for the use of either branch of the general assembly, when in session; also whatever printing may be necessary for the executive office, the office of secretary of state, the comptroller's office, and the treasurer's office, for the current year.

Denomination of type.

§ 4. The acts and resolutions of the general assembly, shall be printed with type of the denomination of small pica, the marginal notes thereof affixed with brevier, and the captions thereof in italic of the size of small pica; and the journals of each house with small pica, and published as hereinafter directed.

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[1] The act of 1828, provides "that the state printer shall within ten days after his election give bond, &c. *and on failure so to give bond, the office shall be vacated, and the general assembly shall proceed to elect another in the manner prescribed by law.*"

§ 5. The secretary of state shall, within ten days after the rising of the general assembly, deliver to the printer so elected, a fair copy of the acts and resolutions thereof, affixing thereunto proper marginal notes, stating the purport of each section; also, within twenty-five days thereafter, deliver to the printer a fair copy of the journals of each house of the general assembly, and also direct the printer in what manner and how the acts of the general assembly and the journals of each house are to be distributed.

Secretary of state to furnish printer with copy of laws and journals, and direct distribution.

§ 6. It shall be the duty of the secretary of state, in preparing the laws passed at each session of the general assembly for publication, to arrange them in two divisions; the first division to embrace all such as are general and public; the second, those which are local or private; and to provide a separate index for each division. The laws and acts in each division, shall be inserted in the exact chronological order in which they have been approved, and numbered consecutively, commencing from the first law or act in each division.

Laws, how to be arranged.

§ 7. Within seventy-five days after the end of each session of the general assembly, the printer shall deliver to the clerk of the county or circuit court of each and every county in this state, the number of copies of the acts and resolutions as directed by the secretary of state, substantially stitched together in one pamphlet: also the number to be directed to be delivered to the secretary of state, with such number of copies covered with boards, as may be necessary for an interchange of laws with our sister states, as is hereinafter provided for: and the printer shall, within thirty-five days after the time given for the completion of the acts aforesaid, in like manner deliver the number of copies of the journals of each house as directed, collected and stitched together, the journals of each house in one pamphlet.

Laws to be distributed within seventy-five days after the session, and journals within thirty-five days thereafter.

§ 8. It shall be the duty of the secretary of state to retain, for the use of the executive officers and the two branches of the general assembly, fifty copies of the acts and resolutions of each session, and shall cause to be transmitted to the secretary of state of the United States, four copies, and to the executive officers of the several states, one copy each; with a request that they send to the executive of this state, in exchange, as many copies of their laws or session acts; and shall direct a distribution to be made in the following manner, that is to say: to the comptroller of public accounts, one copy: to the treasurer of the state, one copy; one to each of the judges of the supreme and [a]circuit courts; one to the attorney general; one to the quarter-master general; one to each solicitor; and to the clerks of the several courts of the several counties in the state, in proportion to the population of each county, agreeably to the enumeration last before made; and the clerks of the several counties shall, upon the receipt of said pamphlets, distribute the same in the manner following, to wit: to each member of the general assembly from the county, one copy; and to every civil officer, ([b]including commissioners of revenue and roads,) one copy. And the secretary of state shall also retain fifty copies of the journals of each house, for the use of the executive and general assembly, and shall direct the residue to be distributed to the several officers of the state hereinbefore mentioned, one copy each; one thereof to the secretary of the senate; one to the clerk of the house of representatives; and to the clerks of the several circuit courts of the several counties, in proportion to the population of each; and the clerks of the counties respectively shall distribute the same as follows:

Laws, to whom distributed.

[a 1833—(18) Sec. 1.]

[b 1830—(20) Sec. 3.]

Journals, to whom distributed.

to each member of the general assembly from the county, one copy; and to each justice of the peace, one copy.

1824—(28) Sec. 1. Journals to be deposited at the election precincts.

§ 9. It shall be the duty of the judges of the county courts in the several counties immediately on the receipt of the journals of the senate and of the house of representatives, to cause the same to be deposited at the several places appointed for holding elections for senators and representatives, in proportion to the number of votes given in at each election precinct.

Ib. Sec. 2. Judge may draw on the county treasurer for necessary expenses.

§ 10. The judges of the several county courts are authorized to draw on the county treasurer of their respective counties, for such amount as may be necessary to carry this act into effect: and it shall be the duty of the county treasurers, respectively, to pay the sum so drawn for, out of any money in the treasury not otherwise appropriated.

1822—(15) Sec. 7. State printer's salary, how paid.

§ 11. The public printer shall receive his salary in the following manner, to wit: one half on the delivery to the secretary of state, of the receipts of the clerks of the several county or circuit courts in this state, showing that the number of copies of acts and resolutions directed by law, was received by them respectively, within the time limited for the delivery of them, and the number required by law to be deposited in the executive office; and the remainder on the delivery of the receipts of said clerks for the journals of the two houses, showing that the number of copies of the journals of each house directed by law, was received by them respectively, within the time limited for the delivery of them, and his having deposited the number of said journals required to be deposited in the executive office: *Provided*, That the receipt of the judge of the county court of any county in which there may be no clerk of the courts aforesaid, or of the sheriff thereof, if there be no such judge, shall be as sufficient as the receipts of the said clerks.

Proviso.

1829—(1) Sec. 1. Salary 2500 dollars.

§ 12. The state printer elected in pursuance of law, shall be entitled to receive the sum of two thousand five hundred dollars; *Provided*, Said printer accurately print and distribute the laws, resolutions, memorials and journals; five hundred dollars of which salary shall become payable by the adjournment of the general assembly, and the balance as now provided for by law, [a]except three hundred dollars, which shall be retained until the expiration of the year for which he shall be elected.

[a 1833—(6) Sec. 2.]

LAWS OF THE UNITED STATES.

1828—(32) Governor to furnish the clerk of each county court with a copy of the acts of congress.

§ 1. It shall be the duty of the governor, and his successors in office, to procure, or cause to be procured, for the use of the citizens of the several counties in this state, a sufficient number of copies of the acts of the present and subsequent sessions of the congress of the United States, to furnish one to the offices of the clerks of the several county courts in this state, there to be kept for the use of the citizens of the respective counties.

1831—(5) Sec. 1. Secretary to cause the acts of congress to be distributed at the same time with the laws and journals.

§ 2. It shall be the duty of the secretary of state, at the time he may distribute the acts and journals of the general assembly, to distribute the acts of the congress of the United States, which may be in his office, among the several counties of this state, according to the ratio by which the acts and journals of the general assembly are distributed: *Provided*, That each county shall be entitled to at least one copy, which shall be retained in the office of the clerk of the county court, for the use of the county; and at least ten copies shall be retained in the office of the secretary of state.

MARRIAGE.

1805—(1)
[a 1821—(2) *Sec.* 1.]
Who may solemnize the rites of matrimony.

§ 1. Any one of the territorial judges, any ordained [a]or licensed minister of the gospel, and any justice of the peace within the county in which such justice is assigned to keep the peace, may solemnize the rites of matrimony between any free persons within this territory, who shall produce a license as hereinafter directed: *Provided*, That such minister shall have produced to the orphans' court of some county in this territory, credentials of his ordination or license, and of his being in regular communion with the Christian society of which he is a member; and have obtained from such court a testimonial authorizing him to solemnize the rites of matrimony in this territory; which testimonial shall be granted at the discretion of said court, and recorded by the register in a book to be kept for that purpose, and also for the purpose of recording therein all marriage licenses, consent of parents and guardians, and certificates of the solemnization of marriages.

Ministers' testimonials.

Marriages by the customs of religious societies.

Clerk of society to certify marriages to orphans' court.

§ 2. It shall be lawful for every pastor of any religious society in this territory, to join together in marriage, such persons as are of the society, according to the rules and customs established by such society to which they belong: *Provided*, That the clerk or the keeper of the minutes, proceedings, or other books of the religious society wherein such marriage shall be had and solemnized, shall make a true and faithful register of all marriages solemnized in the society, in a book by him kept, and return a certificate of the same to the register of the orphans' court, to be by him entered in his book kept for that purpose.

Registry of marriages to be received as evidence in courts.

§ 3. Such book of marriages so kept by the respective registers of the orphans' court, and by the clerks of such religious societies as are authorized to solemnize marriages by the preceding section of this act, shall be admitted as evidence in all the courts of law and equity in this territory.

Quakers, &c.

§ 4. It shall be lawful for the people called Quakers, and Menonists, or any other Christian society that have adopted similar regulations in their church, to solemnize their own marriages, and be joined together as man and wife by the mutual consent of the parties, openly published and declared before their congregation, when convened for religious worship, in manner, and agreeably to the regulations heretofore practised in their respective societies.

Licenses to be issued by the register of the orphans' court. Under what restrictions.

Consent of parents and guardians.

5. Marriage licenses shall be granted and issued by the register of the orphans' court of the county in which the female usually resides, under the following regulations and restrictions: the register shall take a bond with sufficient security in the penal sum of two hundred dollars, payable to the governor of this territory, for the time being, and his successors in office, for the use of the territory, conditioned, that there is no lawful cause to obstruct the marriage for which such license is required; and if the male intending to marry be under the age of twenty-one years, or the female under the age of eighteen years, the consent of the parent or guardian of such infant shall be personally given before the said register, or due proof made to him by the oath of at least one credible witness, (which oath the said register is hereby authorized to administer,) that such parent or guardian did sign a certificate then produced, giving his consent for the celebration of such

Penalty of 500 dollars for issuing license illegally.

marriage: whereupon the said register shall record the consent personally given as aforesaid, or the certificate thereof proved as aforesaid, and issue a license, and record the same, directed to any judge, minister, or justice, lawfully authorized to celebrate the rites of matrimony. And if any register shall issue any marriage license without the requisites before prescribed, or in any other manner than above mentioned, such register shall, for each offence, forfeit and pay five hundred dollars, recoverable by action of debt in any court having cognizance thereof, one-half to the use of the territory, and the other half to the use of the person suing for the same.

Penalty of 1000 dollars for marrying without license, &c., &c.

§ 6. If any judge, minister, or justice, shall join any persons together as man and wife, without lawful license, as by this act required, or go out of the territory and marry persons belonging to the territory, without such license, such judge, minister, or justice shall, in either case, forfeit and pay the sum of one thousand dollars, to be recovered by action of debt; one-half to the use of the territory, and the other half to the use of the person suing for the same.

Judges, &c., to transmit certificate of marriage to the register of orphans' court.

Register's fees.

Penalty of fifty dollars for not returning certificate.

§ 7. A certificate of every marriage hereafter solemnized, signed by the judge, minister, or justice, celebrating the same, (or in case of Quakers, Menonists, and other societies that solemnize their marriage by consent of parties, taken in open congregation as aforesaid, by the clerk of the meeting,) shall be transmitted by such judge, minister, justice, or clerk, as the case may be, to the register of the orphans' court of the county wherein the marriage is solemnized, to be recorded within six months thereafter by the register; an exemplification of which shall be evidence of such marriage. And the register shall receive for his services, for taking bond, consent of parents or guardians, and recording the same, granting and recording license, and marriage certificate, the sum of two dollars, to be paid at the time of issuing such license. And every judge, minister, justice, or clerk of a congregation, as the case may be, failing to transmit such certificate to the register, within the time above prescribed, shall forfeit and pay the sum of fifty dollars, to any person who will sue for the same.

Degrees within which persons shall not marry.

Persons marrying unlawfully, to be indicted, and marriage declared void—but issue not bastardized.

§ 8. If any person shall marry within the following degrees, that is to say: if the son shall marry his mother or step-mother, the brother his sister, the father his daughter, or his daughter's daughter, or if the son shall marry the daughter begotten and born of his stepmother; or his aunt, being his father's or mother's sister; or marry his uncle's widow; or if the father shall marry his son's widow: or if any man shall marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter; such persons so unlawfully married, shall be prosecuted by indictment; and on conviction, shall be fined not exceeding five hundred dollars, to the use of the territory. And the court, on conviction as aforesaid, shall moreover declare such marriage null and void to all intents and purposes; and may, at their discretion, cause the parties so separated, to enter into a recognizance, with security, that they will not cohabit thereafter: *Provided*, That nothing herein contained shall be so construed as to render illegitimate the issue of any such marriage, begotten before the same is so annulled.

1818—(12)
Sec. 1.
Certain marriages legalized.

§ 9. All marriages which were solemnized without license, in any county of this territory, before the organization of the same, are hereby made lawful and obligatory in all respects, and the offspring of such marriages are hereby made legitimate to all legal intents and purposes.

1821—(2)
Sec. 2.
Marriages by *licensed* ministers.

§ 10. All marriages which may have been solemnized by any *licensed* minister, are hereby declared to be legal.

MASONIC INSTITUTIONS.

§ 1. *Be it enacted, &c.* That Thomas W. Farrar, Grand Master, and others the officers and members of the most worshipful grand lodge of ancient free-masons of Alabama, and the subordinate lodges under its jurisdiction, and the several persons who now are, or shall hereafter be members respectively of said grand lodge, or the subordinate lodges under its jurisdiction, shall be, and they are hereby declared to be, a body politic and corporate, in name and in deed, by the name and style of the "*Most Worshipful Grand Lodge of Ancient Free-Masons of Alabama, and its Masonic Jurisdiction,*" and by the same name shall have perpetual succession of officers and members, and a common seal, with power to change, alter, and make new the same, as often as the said corporation shall judge expedient. 1821—(11) Grand and subordinate lodges incorporated. Style of corporation.

§ 2. The said society, and the lodges under its jurisdiction, shall be able and capable in law to purchase, have, hold, receive, enjoy, possess, and retain to itself, or any lodge under its jurisdiction, or any of them in perpetuity, or for any term of years, any lands, tenements, or hereditaments, of what kind or nature soever, not exceeding the value of twenty thousand dollars; and to sell, alien, exchange, or demise, or lease the same, or any part thereof, as the said corporation shall think proper, and by the same name to sue and be sued, to plead and be impleaded, answer and be answered unto, in any court of law or equity in this state, and to make such rules, orders, and by-laws, not repugnant to the laws of this state, as may be necessary for the order, rule, good government, and management thereof; and it shall be lawful for the said society to constitute subordinate lodges, and to do all other things concerning the government, the estates, moneys, and revenues of said grand lodge and subordinate lodges. May hold real property, may make by-laws, and constitute subordinate lodges, &c.

§ 3. It shall be lawful for the said corporation to take and hold for ever, any charitable donation on devises, and bequest of lands not exceeding ten thousand dollars, and to appropriate the same for the benefit of said corporation, in such manner as may be determined by the same. May hold charitable donation in perpetuity.

§ 4. The said corporation shall be capable in law to have, hold, and receive, possess and enjoy all such estates, real and personal, moneys, goods, chattels, and effects, which may be devised or bequeathed thereto, by whatever name such gift, devise, or bequest may be made, and to receive subscriptions and other contributions. May hold any estate bequeathed.

§ 5. This act shall be deemed and taken as a public act, and notice thereof shall be taken in all the courts of justice and elsewhere in this state, and shall be given in evidence on any trial of any issue or cause, without special pleading. This act public.

§ 6. The worshipful master and officers of every lodge of ancient free-masons in the state of Alabama, shall have the privilege of raising by lottery the sum of three thousand dollars for the use and benefit of their lodges respectively, as prescribed by the provisions of this act for the benefit of Russelville Lodge, No. 7, of ancient free-masons. 1821—(18) *Sec.* 12. Every lodge may raise 3000 dollars by lottery.

NOTE.—The law from which the last section is taken, may be found at large among the private acts in Toulmin's Digest, page 584.

MECHANICS.

1821—(9) Mechanics to have lien on buildings worked on by them, until paid.

§ 1. Master-builders and mechanics of every denomination, contracting and engaging to put up and erect buildings of any description, or engaging to perform jobs of work on any such buildings, shall have a lien on all such buildings as they may put up, or erect, or work upon, until the compensation for services shall be fully paid and satisfied, to the amount agreed upon between the contracting parties, unless a contrary stipulation be expressly agreed upon at the time the contract is made and executed.

Lien, how, and in what cases enforced.

§ 2. The persons aforementioned shall enforce the aforesaid lien only in the following cases, that is to say: First, where the contract shall be reduced to writing, and signed by the parties making the same. Secondly, where the amount shall be liquidated between the contracting parties, and a net balance be struck in favor of the person contracting to perform work as aforesaid, or to find or provide materials. Thirdly, where the contracting parties refer the matters in controversy between them to arbitration, and an award is made in favor of the master-builder or mechanic. Fourthly, when the judgment of a competent tribunal shall be rendered in favor of the master-builder or mechanic; it being understood, that should their claim be contested, even where a net balance is struck, they shall proceed according to a due course of law to judgment and execution, as also where they refer their matters in dispute to arbitration, and an award is made in their favor, unless the contrary be expressly stipulated, or where such award is made under a rule of court from the competent tribunal.

Contracts to be recorded within thirty days, or lien forfeited.

§ 3. Every contract entered into pursuant to the provisions of this act, shall be recorded in the clerk's office of the inferior or county court, for the county where the contract shall be made, within thirty days after its execution, for the inspection and examination of all persons whom it may concern; otherwise the party in whose favor the same shall be made, shall lose the benefit of his privilege and lien, and shall be in the same situation as if this act had not been passed.

MILITIA.

Chapter I.—*Constitutional Provisions.*

Con. U. S., Art. 1, *Sec.* 8.

The congress shall have power:

¶ 14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

¶ 15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

Con. Ala. Art. 4. (Militia.)

§ 1. The general assembly shall provide by law for organizing and disciplining the militia of this state, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States in relation thereto.

§ 2. Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

§ 3. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

§ 4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law: *Provided*, That the general assembly shall not make any such elections or appointments, other than those of adjutants-general, and quarter masters-general.

§ 5. The governor shall appoint his aids-de-camp; majors-general, their aids-de-camp, and all other division and staff officers; brigadiers-general shall appoint their aids, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

§ 6. The general assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies; and shall fix the rank of all staff officers.

Chapter II.—*The Militia divided into Divisions, Brigades, Regiments, Battalions and Companies.*

1832—(21) Militia divided into seven divisions, and fifteen brigades.

§ 1. The militia of this state shall be composed of seven divisions; the first division to consist of the counties of Jackson, Madison, Limestone, and Lauderdale; the second division, of the counties of Tuscaloosa, Pickens, Fayette, Marion, Lawrence, and Franklin; the third division, of the counties of Bibb, Perry, Greene, and Marengo; the fourth division, of the counties of Conecuh, Monroe, Butler, Clarke, Washington, Mobile, and Baldwin; the fifth division, of the counties of Henry, Pike, Dale, Covington, and Lowndes; the sixth division, of the counties of Montgomery, Autauga, Dallas, and Wilcox; the seventh division, of the counties of Shelby, Jefferson, St. Clair, Blount, Walker, and Morgan; each of which shall be commanded by a major-general, and the same to form the following brigades, to wit: the first brigade to be composed of the militia of the county of Madison; the second, of the counties of Limestone and Lauderdale; the third, of the counties of Shelby, Jefferson, and St. Clair; the fourth, of the counties of Lawrence, Franklin, and Marion; the fifth, of the counties of Tuscaloosa, Pickens, and Fayette; the sixth, of the counties of Greene and Marengo; the seventh, of the counties of Dallas and Wilcox; the eighth, of the counties of Conecuh, Monroe, and Butler; the ninth, of the counties of Washington, Mobile, Baldwin, and Clarke; the tenth, of the county of Jackson; the eleventh, of the counties of Henry, Dale, and Covington; the twelfth, of the counties of Morgan, Blount, and Walker; the thirteenth, of the counties of Lowndes and Pike; the fourteenth, of the counties of Bibb and Perry; the fifteenth, of the counties of Montgomery and Autauga; each of which shall be commanded by a brigadier-general.

Regiments, how designated.

[a]And the regiments shall be designated and numbered as follows, to wit: of the county of Jackson, number one, thirty-five, and fifty-two; Madison, two, three, and thirty-three; Limestone, four and five; Morgan, six and thirty-nine; Lawrence, seven and eight; Franklin, nine and thirty-seven; Lauderdale, ten and eleven; St. Clair, twelve and sixty-one; Shelby, thirteen and fifty-six; Blount, fourteen; Jefferson, fifteen; Marion, sixteen; Tuscaloosa, seventeen and eighteen; Greene, nineteen and thirty-eight; Marengo, twenty and fifty-four; Bibb, twenty-one and fifty-three; Dallas, twenty-two, forty-one, and fifty-one; Autauga, twenty-three and forty-seven; Montgomery, twenty-four and forty; Henry, twenty-five; Monroe, twenty-six and twenty-seven; Conecuh, twenty-eight; Butler, twen-

[a] Farrar's Dig. Ch. 3. 1827—(1) (2) & (31) 1828—(20) 1829—(16) 1831—(3) & (15) 1832—(5) & (12) *consolidated.*

ty-nine; Clarke, thirty; Washington, thirty-one; Perry, thirty-two and forty-four; Pickens, thirty-four and fifty-nine; Wilcox, thirty-six and fifty; Pike, forty-two and forty-nine; Walker, forty-three; Fayette, forty-five; Dale, forty-six; Mobile, forty-eight; Lowndes, fifty-five and fifty-eight; Baldwin, fifty-seven; Covington, sixty; each of which shall be commanded by a colonel-commandant, and be composed of two battalions, the first of which shall be commanded by a lieutenant-colonel, the second, by a major; each battalion shall consist of not less than two nor more than six companies; each company shall consist of not less than forty privates, and shall be commanded by a captain, lieutenant, and ensign, with four sergeants, four corporals, and two musicians.

Battalions.

Companies.

CHAPTER III.—*Elections.*

Major and brigadier-generals.

§ 1. Major and brigadier-generals shall be elected by all free white males over the age of eighteen years, in their respective divisions and brigades.

Election for generals, where and how held.

§ 2. The elections for major and brigadier-generals shall be held at the same places, and be subject to the same rules, regulations and restrictions, as are prescribed by law for holding and conducting elections for members of the general assembly of this state.

Colonels.

§ 3. Colonels shall be elected by all free white males over the age of eighteen years, in their respective regiments.

Lieutenant-colonel and major.

On vacancy in the office of lieutenant colonel, numerical order of the battalions to be reversed.

§ 4. Lieutenant-colonels and majors, shall be elected by all free white males over the age of eighteen years, within their respective battalions: and whenever a vacancy shall occur in the office of lieutenant-colonel, the colonel shall, at the request of the major in writing (which shall operate as a resignation) issue a writ of election for the purpose of electing a lieutenant-colonel to command the second battalion, which shall be called the first battalion; and the said colonel commandant shall at the same time, issue a writ of election, for the purpose of electing a major to command the other battalion, which shall thereafter be called the second battalion; which alteration in the number of the battalions, and the rank of their commanders, shall take place, as often as a vacancy may occur in the office of lieutenant-colonel.

Captains and subalterns.

§ 5. Captains and subalterns shall be elected by all free white males over the age of eighteen years in their respective companies.

Duration of commissions.

Penalty for resigning unless permitted by court martial.

§ 6. All militia officers may hold their commissions during good behavior:[1] none shall resign under two years, unless permitted to do so by a court martial, the president of which shall be of equal rank with the officer wishing to resign, under the penalty of being ineligible to any military appointment for the next succeeding two years: and in case any military officer may become a candidate at any election for a superior office, and not be elected, his place shall not be vacated thereby.[2]

Adjutant and quarter-master-general.

Temporary appointments.

§ 7. The adjutant and quarter-master general shall be elected by joint vote of both houses of the general assembly, and shall hold their offices for the term of four years: *Provided*, That the governor shall have power to fill any vacancy that may occur in the recess of the general assembly, by appointments to expire at the end of the next general assembly.

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[1] Except adjutant and quartermaster-general, who are elected by the general assembly, and hold their offices for four years.

[2] Constructive resignation,—See § 4.

Elections for generals to be ordered by the governor.

Notice.

§ 8. When any election shall be holden for a major-general, or a brigadier-general, it shall be the duty of the executive to appoint the time of holding the same: giving not less than sixty days, nor more than eighty days' notice for the election of major-general; and not less than forty, nor more than sixty days' notice for the election of brigadier-general.

Governor to appoint one of the sheriffs returning officer.

§ 9. The governor upon issuing a writ of election for major-general, or brigadier-general, to the sheriffs residing in said division or brigade, shall determine on one of the said sheriffs, to whom the other sheriffs of the said division or brigade, shall, immediately upon the close of the polls, make their returns; and the sheriff receiving the said returns shall, within four days, transmit to the secretary of state, a correct poll of said election.

Elections, by whom ordered,—for colonel,

for lieutenant-colonel and major,

for company officers.

§ 10. When any vacancy occurs in any regiment, it shall be filled in the following manner: when in the office of colonel, the brigadier-general shall issue a writ of election to the sheriff, giving thirty days' notice of, and appointing the time of holding such election; the colonel commandant shall in like manner provide for the election of lieutenant-colonels and majors; and the said sheriff shall advertise the said elections in at least six of the most public places, and open a poll at the several precincts, within the limits of the regiment in which said election shall take place; and shall make his return thereof in the same manner as is made in the election of general officers; lieutenant-colonels and majors shall order elections for company officers within their respective battalions, and shall appoint the place of holding said elections, within the company district where such vacancy may be, giving at least fifteen days' notice thereof, and appoint a superintendent of the same, who shall make a return of the poll of said election to the commanding officer of the regiment, a statement of which shall be by him transmitted to the executive office.

[1829—(16)] *Sec.* 6.

Vacancy occurring by removal, the officer next in command shall give notice thereof.

§ 11. When any militia officer moves out of the bounds of the division, brigade, regiment, battalion, or company for which he may have been elected as an officer, it shall be the duty of the officer next in command to give notice thereof to the officer, whose duty it shall be to order an election to be held to fill the place of the officer who has so moved from the bounds for which he was elected.

Commissions.

What must be specified in returns for commissions.

§ 12. In all cases where returns have been or shall hereafter be made to the secretary of state, the governor shall commission accordingly; and in all returns upon which commissions are to be issued, if to fill a vacancy, the name of the person and cause of such vacancy shall be stated in said returns; if an original appointment, the return shall so express it.

Certificate of colonel sufficient to enable battalion and platoon officers to act.

§ 13. In all elections of battalion and platoon officers, the certificate of the colonel-commandant, or commanding officer of any regiment, certifying that any person has been duly elected to any military appointment in his respective command, shall be sufficient to constitute the person so elected, the proper officer of such battalion or company; who shall, upon the receipt of the aforesaid certificate, be vested with the same authority, and be as amenable to the militia laws of this state, as commissioned officers: *Provided*, That no person shall enter on the discharge of any military duty, unless he take the oath heretofore prescribed: *Provided also*, That nothing herein contained, shall interfere with the mode heretofore prescribed for contesting elections.

Commanding officers of regiments to forward returns for commissions.

§ 14. It shall be the duty of the commanding officers of the different regiments of this state, to forward on to the secretary of state, the names of officers thus elected within their respective commands; and on the receipt of the same, the governor shall commission ac-

Officer elect refusing to qualify, &c. presumed to have resigned, &c.

cordingly:—And should the person elected refuse or neglect for thirty days after the receipt of his commission, to qualify, and to notify the commanding officer of the regiment of his having qualified as directed by law, the officer thus refusing or neglecting, shall be presumed to have resigned, and shall be disqualified from holding any military appointment for two years thereafter.

Managers of company elections to give certificates of election.

§ 15. The superintendents of elections for company officers, in addition to the returns now required by law, shall furnish the person elected with a certificate of his election.

Mode of Contesting Elections.

Elections of major or brigadier-generals, how contested.

§ 16. In elections for major-generals or brigadier-generals, if any candidate be dissatisfied, he may notify the governor, and the contending candidate, that he intends to contest the election; and shall file his reasons therefor in the office of the secretary of state, within twenty days after said election; whereupon, the governor shall forthwith issue his order to the adjutant-general, directing a general court-martial to be holden, to consist of not less than seven, nor more than thirteen officers, who shall have power to decide which of the contending candidates is duly elected, or to declare said election void:

Grade of president of court martial.

Provided, That an officer of equal grade with the office for which the candidates may contest the election, shall be detailed as president thereof; and in the event of his failing to attend at the time and place specified in the order, the officer attending highest in rank shall preside.

Elections of field and subaltern officers, how contested.

§ 17. When any one shall have been elected to a military office or appointment below the grade of major or brigadier-general, the opposing candidate, after such election has been held, if he thinks himself aggrieved, and shall think proper to contest the election, shall notify the officer ordering the same, in writing, within ten days after said election; and the officer ordering said election, shall order a regimental or battalion court-martial, as the case may be, which shall decide the contest; the president of the court shall transmit the decision of the court to the secretary of state; but if the election shall be set aside by the decision of the said court, the president thereof shall transmit the said decision to the officer ordering the said election, who shall forthwith order a new election.

Chapter IV.—*Duties, Powers, and Privileges.*

[Con. Ala. Art. 4, *Sec.* 6.] Governor, commander-in-chief.

§ 1. The governor shall be commander-in-chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the general assembly shall fix his rank.

Governor may appoint four aids.

§ 2. The governor shall have power to appoint four suitable persons as aids-de-camp, who shall have the rank of lieutenant-colonel, and serve the governor, in the same manner as the aids of general officers do.

May assist the citizens to erect works of defence.

§ 3. The commander-in-chief, for the time being, may at his discretion, aid and assist the citizens of any portion of the state, in erecting temporary works and means of protection; and build such redoubts, and establish such military posts as he shall deem necessary and best calculated to promote the common defence.

May remove public arms to places of safety, and provide guards. Shall examine arsenals, and displace negligent keepers.

§ 4. He shall have authority to remove to some temporary place of safety, and deposit such portion of the arms, ammunition, and military stores, at any time deposited in the arsenals of the state, as circumstances may appear to require, and when necessary in his opinion, to provide and furnish sufficient guards to protect public arsenals, until it be found expedient to call out into the public service detachments of militia, on whom this duty shall in part devolve; and it shall also be his duty from time to time, to examine, or cause to be examined, by some proper officer, the situation of the several arsenals throughout the state, to require security from the arsenal keepers, and to remove them for negligence or other improper conduct, or for incapacity for performing the duties devolving on them as such, and to appoint in case of removal, other persons to supply the vacancy thereby occasioned.

Major-general to appoint adjutant-general. Duties of adjutant-general of division. Major-general may appoint inspector-general, quarter-master-general, and two aids.

§ 5. The major-generals shall have power to appoint an adjutant-general, with the rank of colonel, to their respective divisions, whose duty it shall be to receive returns of the strength and condition of the militia, from the assistant-adjutant-generals, consolidate the same, and make out three fair copies thereof, lay them before the major-general for his inspection, and transmit annually, on or before the third Monday in November, one copy thereof to the adjutant-general of the state, and retain the other copy in his own office.[1] It shall also be his duty to make all details (in pursuance of orders from the major-general,) on the different brigades of their respective divisions, and keep a fair register of all the general orders, and official acts of the major-general, and lay the same when required, before any tribunal, before which a major-general may be tried on any charges exhibited against him. Major-generals shall also have power to appoint an inspector-general, with the rank of colonel, and a quartermaster-general, and two aids-de-camp, with the rank of major, whose several duties shall be such as are prescribed for officers of the like rank and grade, in the army of the United States.

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[1] The following note from Farrar's Digest of the Militia Laws, in explanation of the subject of this section, is deemed worthy of an insertion, notwithstanding its length.

"There is no subject of more importance, and none less attended to, in the whole compass of the militia laws, than that of returns; because by a faithful, correct, and regular attention to this matter, the state is enabled to receive her quota of the public arms appropriated by the act of congress; and no subject appears to be less understood, although many acts of the legislature have been passed, requiring them, and pointing out the mode in which they shall be made. And such, in fact, have been the multiplicity of legislative enactments upon the subject, that the whole is now completely obscured and enveloped in doubt and uncertainty. If I may be allowed, however, to hazard a conjecture upon the matter, I would say, that the mode is not altered since the year 1822, except that additional duties are assigned adjutants of regiments, by an act passed in 1823, (See § 14 of this Chapter.) I should conceive, however, that it is still the duty of adjutants of regiments, to make a return of the strength and condition of their several regiments to the assistant-adjutants-general of brigades, who consolidate the regimental returns, and forward the same to the adjutants-general of their respective divisions, who thereupon consolidate the brigade returns, and forward a copy thereof to the adjutant and inspector general of the state at the seat of government, who consolidates the division returns, and forwards the same to the War Department at Washington, for the purpose of enabling the proper officer there, to decide upon the quota of arms to which this state is entitled. But lest there might be a failure in some of these officers, the act of 31st December, 1823, made it the additional duty of the regimental adjutants to forward a copy of their returns direct to the adjutant and inspector general of the state. In the clause of the above mentioned act, respecting these duties, there is evidently a mistake in saying '*Assistant-Adjutants-General,*' which ought to have been adjutants-general of divisions, from whom the adjutant and inspector general of the state receives the returns."

[a 1832—(21) *Sec.* 3.] Major-general to review. To execute governor's orders.

§ 6. Major-generals[a] shall review the regiments of their respective commands, once in two years, and may review any corps of their division when they think proper: *Provided*, They shall not convene by special order, any troops for that purpose. Major-generals, or officers commanding divisions, shall receive and execute all orders from the governor.

To arrest brigadier-generals, &c.

§ 7. It shall be the duty of the major-general to arrest a brigadier-general for neglect of any of the duties enumerated in the act of 31st December, 1822;[1] and order a court-martial for his trial.

Brigadier-general to appoint brigade-staff. Duties of assistant adjutant-general.

§ 8. Brigadier-generals shall appoint their brigade-staff, which shall consist of an assistant-adjutant-general, with the rank of major; an inspector-general, with the rank of major; an aid-de-camp, and a brigade-quartermaster, with the rank of captain. It shall be the duty of the assistant-adjutant-general to receive from the adjutants of regiments, returns of their strength and condition, consolidate the same, and make three fair copies, which shall be submitted to the brigadier-general for his examination, one of which copies he shall annually transmit to the adjutant-general of the division to which his brigade may belong, retaining the others in his office; it shall also be his duty to make all details, (in pursuance of orders from the brigadier-general,) on the respective regiments of his brigade, and keep a fair register of all general orders and official acts of the brigadier, and lay the same before any tribunal, before which the brigadier-general may be tried on any charges alleged, when required to do so:—it shall be the duty of the assistant-inspector-general, and aids-de-camp, to perform such duties as are performed by officers of the like grade and rank in the army of the United States; brigade-quartermasters shall take charge of all public stores committed to their care, and perform all other duties required of assistant-quartermasters-general, in the service of the United States. Brigadier generals [b]shall review the different regiments of their brigades, once in each and every year; and shall have power to arrest any officer in their brigades for neglect of duty: brigadier-generals, or officers commanding brigades, shall receive and execute all orders from the major-general, or officers commanding divisions.

Of assistant inspector-general, aids-de-camp, and brigade quarter-master.

[b 1832—(21) *Sec.* 3.] To review regiments and execute orders from major-general.

Colonel to appoint staff. Paymaster to give bond. May make other appointments.

§ 9. The colonel or officer commanding a regiment, shall have power to appoint his regimental staff, which shall consist of one adjutant, one quartermaster, and a paymaster who shall perform such duties as are performed by the paymasters in the army of the United States, and who shall give bond, with security, for the faithful performance of his duty, in the sum of five hundred dollars to the governor; and it shall be the duty of the colonel or officer taking such bond, to transmit the same to the secretary of state's office. The colonel or commanding officer of a regiment shall also have power to appoint one surgeon and two mates; a sergeant major; a quartermaster-sergeant; a drum-major; and fife-major. The adjutant, quartermaster, and paymaster shall be commissioned by the governor, and rank as lieutenants.

Colonel to execute orders from brigadier.

§ 10. Colonels or officers commanding regiments shall receive and execute all orders from brigadier-generals, or officers commanding brigades; and officers commanding battalions and companies, shall receive and execute all orders from commanding officers of regiments.

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[1] All the duties of brigadier-general detailed in the act of 31st December, 1822, which have remained unrepealed up to the present date, are enumerated in the following section.

1831—(6) *Sec.* 1. *incorporated.*

Adjutant-general, his rank and duties.

§ 11. The adjutant-general of the militia of this state, shall be adjutant and inspector-general, with the rank of brigadier-general. He shall receive from the adjutant-generals of divisions, all returns of the strength and condition of the militia of this state, and make out four fair copies thereof, annually lay one copy of the same before each branch of the general assembly, and retain one copy in his own office, for the information of the governor; he shall transmit all orders from the governor, and in pursuance of his orders, make details on the several divisions of this state ; he shall annually transmit to the secretary of the war department of the United States, a return of the strength and condition of the militia of this state; he shall obey and execute all orders of the governor, and shall receive a per diem of four dollars, for each and every day in which he shall be engaged in the actual discharge and fulfilment of his official duties ; and the further sum of seven cents per mile for every mile which shall be travelled by him while employed about the same; and the governor's certificate shall be deemed a sufficient voucher to the treasurer of the state, for the payment of the same : *Provided,* That the sums thus paid shall not exceed, in any one year, the sum of two hundred dollars.

Compensation.

Quarter-master-general's duties.

§ 12. The quartermaster-general shall be charged with the care of all public stores, of arms, ammunition, tents, camp equipage, &c., and when any part of the militia of this state shall be called into actual service, he shall, on the requisition of the governor, furnish such articles of arms, ammunition, and camp equipage, as may be in his possession or power to procure; he shall perform all such duties (when in the field) as are performed by quartermaster-generals in the army of the United States, and shall have the rank of colonel: he shall keep a register of all arms, accoutrements and military stores belonging to the state; he shall also take care of such of the public arms and stores, as may be returned by any part of the militia of this state who have been in actual service ; he shall at all times give the governor, when required, an account of the quantity, state, and condition of all arms, camp equipage, and public stores, that may belong to the state; he shall give security in the sum of two thousand dollars, for the faithful performance of his duty, and receive for his services annually, [a]*two* hundred dollars : *Provided,* That he shall receive no salary, except he keep the public arms in good order, which are deposited in the state arsenal.

To rank as colonel.

To give bond with security.

(a January 29, 1829.)

Salary.

Adjutants of regiments.

Their duties

§ 13. It shall be the duty of the adjutant of the regiment to attend all regimental and battalion musters, and assist in preparing for review or evolutions : he shall keep a register of all the officers of the regiment, with their grades, and the strength and condition of each company ; he shall obey all orders from the field officers of his regiment, serve all notices or process directed to him, on the officers of his regiment, and transmit the same to the assistant-adjutant-general of his brigade ; he shall keep a record of all regimental and battalion orders, and the proceedings of regimental and battalion courts-martial ; he shall keep a register of every officer and private drafted or detailed for the service of the state, or of the United States ; muster, inspect, and march to the place of rendezvous, every detachment of detailed militia, and forward a complete return of them to the assistant-adjutant general ; he shall distribute to the captains or commanding officers of the companies of his regiment, such forms of returns, as the assistant-adjutant-general may furnish him with ; he shall drill all the commissioned officers of his regiment the day preceding the regimental muster, under the superintendence of the colonel-commandant or commanding officer.

Additional duties of adjutants.

§ 14. In addition to the duties heretofore prescribed for adjutants of regiments, they are hereby required, within ten days after their regimental muster, to furnish their colonel-commandant or commanding officer, with a full and complete return of the strength of the regiment, which return shall be countersigned by the commanding officer, and transmitted, within twenty days thereafter, to the adjutant-general of this state; whose duty it shall be to consolidate the same, should he not receive the returns of the assistant-adjutant-generals, or should they not be complete;[1] each adjutant shall receive such compensation as the regimental court-martial shall think proper for his services, to be paid by the paymaster out of the fines collected, on order from the president of such court.

Compensation.

Quartermaster's duties.

§ 15. It shall be the duty of the quartermaster to attend all regimental and battalion musters, and under the direction of the commanding officer, choose a place of parade, and with a guard prevent disturbances from spectators; he shall, on order from the commanding officer of the regiment, purchase instruments of music, colors, &c. and draw on the paymaster for the same.

Paymaster's duties.

§ 16. It shall be the duty of the paymaster to attend regimental and battalion musters, and aid in the execution of the orders of the commanding officer; he shall receive all moneys collected for fines by the sheriff or constable, and receipt for the same; he shall account to the regimental court-martial, at every annual session, for the amount of fines received, and how expended; he shall, on order from the president of the regimental court-martial, pay the quartermaster, and adjutant, for expenses and services:—the regimental paymaster shall retain six per centum out of the moneys received, as a compensation.

Compensation.

[a 1828—(21) *Sec.* 2.] Duties of company officers.

§ 17. The commanding officers of companies shall hold [a]*two* company musters annually; and shall give at least five days' notice, through the orderly sergeant of the company, of any company, battalion, or regimental muster; or a notice given at one muster of the next company, battalion, or regimental muster, shall be deemed sufficient notice of the same; he shall note down all delinquents at company musters, and make a return thereof on honor to the company court-martial; and in like manner, make return of delinquents at battalion or regimental musters, to battalion or regimental courts-martial; he shall cause the company to be drilled in conformity to the instructions governing the infantry of the United States.

Non-commissioned officers, how appointed.

§ 18. Any officer commanding a company, shall have power to appoint the non-commissioned officers of his company; and any non-commissioned officer so appointed and refusing to act, shall be fined five dollars.

When all company offices are vacant, commander of the battalion to appoint a sergeant.

§ 19. Whenever it shall so happen that any company in the militia of this state is without any officer or non-commissioned officer, it shall be the duty of the commanding officer of the battalion to which such company may belong, to appoint a sergeant, whose duty it shall be to take the command of said company, until some officer is duly elected and commissioned to command the same: *Provided however*, that if any sergeant appointed by virtue of this act shall neglect and refuse to act, such sergeant shall be fined in the sum of ten dollars, recoverable before a justice of the peace, which shall be applied exclusively to the use of the regiment. And it shall be the duty of the commanding officer aforesaid to inform against the said sergeant.

Officers and privates exempt from arrest, &c.

§ 20. No officer or private shall be arrested by any civil process, while going to, continuing at, or returning from any muster or court-martial, or other military meeting; and any arrest, process, or execution on the person, at such time, is hereby declared void. All persons liable to do militia duty, going to or returning from any muster or court-martial, shall pass all ferries, bridges and turnpikes, free of expense. Ferriages.

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[1] See note to § 5 of this chapter.

§ 21. All arms and accoutrements of the militia of this state, shall be exempted from distress, either by attachment, execution, or other legal process. Arms, exempt from distress, execution, &c.

§ 22. All militia called into actual service, shall be paid, provisioned, and governed as the United States' troops are, and be subject to the rules and articles for the government of the armies of the United States, whether such militia be accepted in the service of the United States, or of this State. Militia called into service, to be paid and governed as U. S. troops.

Chapter V.—*Courts-Martial.*

§ 1. Whenever charges shall be preferred against any officer in the militia of this state, a court-martial for the trial of such officer shall be detailed in the following manner, to wit: If charges shall be preferred against a major-general, then it shall be the duty of the governor to detail a court-martial for the trial of such officer; if against a brigadier-general, then a court-martial shall be detailed by the major-general of such brigadier-general; if against a colonel, lieutenant-colonel, or major, then a court-martial shall be detailed by the brigadier-general commanding such officer or officers; if against a captain, lieutenant, or ensign, then a court-martial shall be detailed by the commanding officer of the regiment to which such officer or officers may belong. Courts martial for the trial of officers;—by whom detailed.

§ 2. These courts-martial shall consist of not less than five, nor more than eleven members, the president of which shall be of equal rank with the officer or officers to be tried; and the officer ordering such court-martial shall have power to approve or disapprove of its decision. Number of the court. Decision,—how approved.

§ 3. The president and judge-advocate of any of the foregoing courts-martial shall be designated in the general order of the officer ordering such court; and if the president shall fail to attend, then the senior officer present shall be the president of said court: and if the judge-advocate shall fail to attend, then the court shall appoint a judge-advocate, whose duty it shall be to keep a just and true account of the proceedings of said court, including the evidence, and return the same to the officer ordering the court, by whom the same shall be preserved. President and judge-advocate to be named in the order. In case of non-attendance.

§ 4. The president and members of any of the foregoing courts-martial shall take an oath before they enter on the discharge of their duties, impartially and according to law and evidence, to decide the case referred to them, and to keep secret the proceedings of said court until the injunction of secrecy shall be removed by the officer ordering the court: the judge-advocate shall take an oath before he enters on the discharge of his duties, well and truly to discharge his duties as judge-advocate according to military usage. Members of court-martial to be sworn.

§ 5. The commanding officers of regiments and battalions shall, after their respective regimental or battalion musters, detail a regimental or battalion court-martial, as the case may be, to convene within twenty days thereafter, for the trial of such persons as may be brought before it, giving at least five days' notice to each defaulter; it shall be the duty of the officer ordering the court, to appoint the adjutant or such person as he may think proper, who shall act as judge-advocate Regimental and battalion courts-martial.

to said court:—No officer shall be a member of the court-martial who is a defaulter.

[1828—(21) Sec. 1.]
Company courts-martial.
[a 1833—(29) Sec. 2.]
Appeal to battalion court-martial.

§ 6. Company courts-martial shall be holden *on the days appointed for their succeeding musters*, of which all delinquents shall be notified by a non-commissioned officer, at least five days previous to holding said court-martial,[1] and the commanding officer shall detail said court, (which shall consist of two or more commissioned officers,[a]) over which the captain or commanding officer is authorized to preside: and any person aggrieved by the decision of said court, shall, within ten days thereafter, be entitled to an appeal to the battalion court-martial, and the officer holding the said company court-martial shall furnish the said battalion court-martial with the proceedings in the case; and if the decision shall be confirmed against the delinquent, he shall be fined in double the amount of the judgment of the company court-martial.

Brigade court-martial.

§ 7. A majority of the officers of each brigade shall constitute a brigade court-martial, when convened for that purpose by the brigadier-general of each brigade.

[b 1828—(23) Sec. 2.]
Regimental
[c 1829—(16) Sec. 7.]
and battalion courts-martial.

§ 8. Regimental and battalion courts-martial, shall require a majority ([b]and when convened for the trial of defaulters, *to be not less than five*) of the commissioned officers of the regiment or battalion to constitute a court; [c]and any person dissatisfied with the decision of any battalion court-martial, shall be allowed ten days to appeal therefrom to the next regimental court-martial, upon applying for said appeal to the judge-advocate of said battalion court-martial.

[1833—(29) Sec. 3.]
Powers of regimental courts-martial.

§ 9. Regimental courts-martial shall have power to try all delinquent commissioned and non-commissioned officers of each regiment, for neglect of duty, who may be fined, as the law provides, under the head of "Pains, Penalties," &c. agreeably to their rank.

May summon witnesses.

§ 10. Courts-martial shall have the same power to compel the attendance of witnesses, as is vested in the courts of law in this state.

No compensation to members.

§ 11. No allowance shall be given to officers, for services rendered as members of any court-martial whatever.

Judge-advocate's pay.
[d 1828—(23) Sec. 3.]

§ 12. Judge-advocates attending courts-martial shall be allowed no more than four dollars for each day they may be engaged in completing the records of the same [d]to be paid on the president's certificate, out of the regimental funds, except when a regimental court-martial shall be in session for the trial of commissioned or non-commissioned officers, or privates, for offences other than default at musters or drills; in which case said allowance shall be paid by the state, and the president's certificate shall be deemed a sufficient voucher to the treasurer of the state, for the payment of the same.

Mode of summoning witnesses to attend a court-martial.

§ 13. When any court-martial shall be ordered, the president of said court shall, on application of either of the parties interested, issue a summons for any witness, which shall be served by the sheriff of the county where such witness may reside, and returned by said sheriff as in civil cases: *Provided*, That the parties desiring such summons to be served, shall tender to the sheriff such fees as are allowed him for serving subpœnas in civil cases.

Sentence affecting life.

§ 14. No sentence of a court-martial, affecting the life of an officer, shall be executed until approved by the governor, and four-fifths of both houses of the general assembly.

Officers may be cashiered.

§ 15. Any officer of the militia of this state, who shall be found guilty of conduct unbecoming an officer and a gentleman, shall be cashiered.

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[1] See "Drills and Musters," Chapter 10, § 4.

Change of regiments and battalions.

§ 16. Regiments and battalions may be changed by a general court-martial, or regimental court-martial, as the case may be, for the internal regulation of either.

Boundary lines of beats, how changed.

§ 17. The boundary lines of no captain's beat shall be altered, but with the consent of a regimental court-martial.

Chapter VI.—*Pains, Penalties, Fines, and Forfeitures.*

Limits of fines according to grade.

§ 1. The following fines shall be assessed on officers and privates failing to perform any of the duties required by the militia laws of this state: on a major or brigadier-general, not less than fifteen nor more than two hundred dollars; on a colonel, not less than ten nor more than one hundred dollars; on a lieutenant-colonel or major, not less than eight nor more than seventy-five dollars; on a captain, not less than four nor more than fifty dollars; on a lieutenant or ensign, not less than three nor more than thirty dollars; on any of the regimental staff, not less than three nor more than thirty dollars; on non-commissioned officers, not less than two nor more than ten dollars; and on privates, not less than one nor more than three dollars.

Drafts refusing to attend, punished with death.

§ 2. Any non-commissioned officer or private, who shall refuse when drafted and ordered to repair to the place of rendezvous, shall suffer death, or such other punishment as a court-martial shall inflict.

Refusal to turn out on order, how fined.

§ 3. Any non-commissioned officer or private of the militia, who shall refuse to turn out on the order of his proper officer, in case of insurrection, invasion, or alarm, shall be fined in any sum not less than one hundred nor more than five hundred dollars.

Fines, how collected.

§ 4. All fines incurred shall be returned by the president of the court-martial before whom such fines may be assessed, to the constable of the company in whose limits the offender may reside, or to the sheriff of the county, for collection; and also a certified copy of the same to the paymaster of the regiment. The certificate of the president shall be a sufficient warrant to the constable or sheriff for the collection of the same, and the constable or sheriff shall be further required to collect and pay over to the regimental paymaster, all such fines within forty days after receiving the authority for collection, and take a receipt from the paymaster for the same; if no property be found, the defaulter may be seized and committed to jail, until the fine be paid: *Provided however*, That all reasonable excuses shall be heard by the court, when the party accused shall appear to give the same: *And provided also*, If the said defaulter shall swear before any justice of the peace, that he is not worth the amount of the fine, he shall be released; and the sheriff or constable shall be allowed such fees as the law allows in other claims of the same amount: and should the said constable or sheriff fail to pay over or account to the paymaster within the time required, for the amount of fines assessed and returned to him as aforesaid, the paymaster shall commence a suit against the said constable or sheriff, for the amount of the fines not accounted for, before any court having jurisdiction thereof: and should the paymaster fail in the prosecution of any suit as aforesaid against the constable or sheriff, he is authorized to pay the costs out of any money he may have in possession on account of fines.

Excuses to be heard.

Party fined, may make oath of his inability to pay.

Proceedings against sheriff or constable for failing to account for fines, &c.

Party fined removing, certificate of amount to be forwarded.

§ 5. Should any person who has been fined according to the provisions of the law, remove out of the county in which said fine was assessed, the amount of the said fine shall be forwarded to the sheriff of the county into which the delinquent has removed, by the constable of the company or sheriff of the county from which the delinquent had removed; and the sheriff to whom such return is made, shall proceed forthwith to make the money, within thirty days, and cause the same to be paid over to the paymaster of the regiment from which said delinquent removed, after retaining such commissions as are granted for the collection of such sums in other cases.

Company fines to purchase music, &c.

§ 6. All fines assessed by any company court-martial, and paid over to the paymaster of the regiment, shall be applied exclusively to the purchase of music, colors, hiring musicians, &c. for the use of said company: *Provided however*, That all fines assessed and collected by any company court-martial from defaulters at battalion and regimental musters, shall be paid as heretofore to the paymaster, for the use of the regiment.

Furloughs.

§ 7. If any officer whatever shall absent himself from his command at any time, for a longer period than twelve months, unless furloughed by the commanding officer of the regiment, brigade, division, or of the state, as the case may be, his office shall be considered vacated, and shall be filled as provided by law in other cases of vacancies.

On resignation, &c., books, music, and colors, to be transferred to successor.

§ 8. In case of the resignation or removal of any officer commanding a regiment or battalion, it shall be his duty to deliver the books, musical instruments, and colors belonging to the regiment or battalion, to the officer succeeding him in the command; and in case of his neglect or refusal, he shall be fined in a sum not exceeding one hundred dollars, at the discretion of the court-martial trying such offence.

By-standers interrupting drill, may be confined. Persons enrolled appearing, to be ordered into ranks. Invalids only exempted.

§ 9. Any officer may put into confinement for the day, any by-stander that may interrupt the muster, drill or court-martial: and any person enrolled appearing at any muster or drill, shall be ordered into ranks; and if he refuses, shall be put into confinement for the day, and fined as a defaulter; and no person shall be exempted from military duty, unless in the opinion of a regimental court-martial, he shall be unfit for service; and if the court have doubts, they may require the opinion of the regimental surgeon: as soon, however, as such inability may be removed, he shall again be ordered to duty. [But see next Chap. § 1.]

CHAPTER VII.—*Enrolment, and Exempts.*

Who to do militia duty. Who exempt.

[1822—(14) Sec. 16. 1823—(23) Sec. 5. 1827—(18) Sec. 1. 1829—(8) Sec. 1.]

§ 1. All free white men and indented servants, between the ages of eighteen and forty-five years, shall compose the militia of this state. Judges of the supreme, chancery, circuit, and county courts, and their respective clerks, secretary of state, treasurer, comptroller, attorney-general, solicitors of the different circuits, licensed ministers of the gospel of every denomination, public ferrymen, justices of the peace, post-masters, post-riders, millers, commissioners of revenue and roads, the directors, cashier, teller, and clerk or clerks of the bank of the state, the register and receiver of the public moneys at the land office of the state of Alabama, and all officers, servants, and students belonging to the university of the state of Alabama, shall be exempt from militia duty, except in cases of imminent danger, insurrection, or invasion.

Persons liable to do duty, required to report themselves within thirty days.

§ 2. Every person liable to do military duty, moving into the bounds of a company shall, within thirty days, or at the next muster after his arrival in said bounds, report himself to the commanding officer of said company, who shall immediately enrol him. Every person between the age of eighteen and forty-five years shall be compelled to do militia duty, by the commanding officers of the company in whose bounds he may reside, until such person shall produce a certificate from the captain of some volunteer company that he is legally enrolled in such corps, and is equipped as the law requires.

Invalids are also exempted.—See Chap. 6, § 9.

CHAPTER VIII.—*Drafts.*

Captains to subject to draft, all persons liable to do duty.

§ 1. IT shall be the duty of each and every captain, to subject to a draft each person liable to do militia duty, who may at any time have been enrolled in his company, unless he knows such person has actually removed permanently from his district, or unless such person so enrolled shall produce a certificate from some officer commanding a company, that he is duly enrolled in the company of the officer so certifying.[1]

Officers commanding regiments, required to order courts-martial, to try delinquents and deserters.

Apprehension of deserters.

§ 2. It shall be the duty of each lieutenant-colonel[2] or officer commanding a regiment, in the event of any non-commissioned officer or private being drafted or ordered for service, and failing to repair to the place of rendezvous, or furnish a sufficient substitute, to order a regimental court-matial as soon thereafter as may be convenient, to assess the fine; and in case such delinquent be arrested and in custody, he shall be tried for the desertion; and if any person shall abscond, or fail to repair to the place of rendezvous when drafted or ordered as aforesaid, any person whatever apprehending such delinquent, and delivering him to the officer commanding the detachment in service which he failed to join, or from which he absconded, shall be entitled to a certificate therefor, and be credited for a six months tour of duty in the regiment to which he belongs; and any militia-man drafted or ordered for service as aforesaid, and failing to appear, the deficiency occasioned thereby shall be supplied from the captain's district to which such delinquent belonged, and in case he be afterwards arrested, he shall be bound, in addition to the fine imposed upon him by the court-martial, (if he is not sentenced to death,) to take the place of the man who was drafted to supply such vacancy, except the man apprehending such delinquent be a militia-man in service, and in that case, the man so apprehending him shall be entitled to a discharge from the service, and the person apprehended put in his place.

Its consequences.

Substitutes liable to be drafted.

§ 3. In case of a second draft before the tour of duty expires for which a substitute has been hired, the substitute shall stand his draft, and if drafted, shall be liable to join the second detachment as soon as his former tour may expire; and in case of drafts, the requisitions shall call for officers, non-commissioned officers, and privates: *Provided always*, That any person furnishing a substitute shall be exempt from serving himself, but shall notwithstanding, be compelled to attend company, battalion, and regimental musters, and perform patrol duty; and in the event of a second draft, should a substitute be drafted, before the former tour of duty is performed, the person furnishing said substitute, shall perform his tour of duty, until the former has been performed, and the said substitute joins the second detachment.

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[1] This is understood to be some officer of a *volunteer* company, as the person would have no right to enrol himself in any other beat or district company, but the one in which he resides.

[2] The peculiar phraseology of this section is owing to the fact, that in 1814 when it was passed, there was no higher officer in a regiment than a "*lieutenant-colonel*"—the alternative words "or officer commanding a regiment," render the provisions of the section equally applicable to the present organization of the militia of this state.

CHAPTER IX.—*Volunteers and Uniform.*

Light Infantry and Riflemen.

§ THERE may be one company of volunteer infantry or riflemen in each regiment, to consist of not less than forty, nor more than eighty privates; to be officered in the same manner as other companies of the regiment are. The non-commissioned officers and privates of the said company shall be liable to do patrol duty within the limits of the militia company in which they may reside; they may choose their uniform, and no volunteer company shall be raised for a shorter period than two years: *Provided*, That no militia company shall be reduced to a less number of privates than forty, by raising such volunteer company.

Cavalry and Artillery.

§ 2. There may be one troop of cavalry and one company of artillery in each regiment, organized in the same manner, and liable to perform the same duties as other volunteer companies.

[1828—(23) *Sec.* 1.] By-laws of volunteer companies.

§ 3. All by-laws, not repugnant to the laws of this state, made by volunteer companies, shall be binding on said companies, and all fines or forfeitures accruing under said by-laws, may be collected in the same manner as any other fines or forfeitures arising under any militia law of this state.

Time for uniforming.

§ 4. All commissioned officers shall uniform themselves within six months after they shall have been commissioned.[1]

Uniform to be the same as that of the U. States.

§ 5. The uniform of the officers of the militia of this state, shall be the same as the uniform of the officers of the same grade of the army of the United States; and it shall be the duty of the adjutant-general to furnish without delay to the assistant-adjutant-general of each brigade, a statement, regulating the uniform of the militia of this state, identifying the different articles of the same: *Provided*, That no platoon officer shall be required to change the uniform which he now has, nor shall any platoon officer be subject to fine for not being in uniform, or field or general officer for wearing lace, or for not wearing chapeau-de-bras; and that all officers may wear red or black sword belts as well as white.

Proviso.

CHAPTER X.—*Drills and Musters.*

Regimental drills.

§ 1. IT shall be the duty of the brigadier-general to cause the commissioned officers of each regiment to meet at their usual muster-ground and be drilled, the day previous to the regimental muster, by the adjutant, under the superintendence of the colonel-commandant or commanding officer, giving at least thirty days' notice thereof. All non-commissioned officers are exempted from attending said drills.

Battalion musters.

§ 2. Each battalion shall hold one muster annually, at such time and place, near the centre of the bounds of the battalion, as may be directed by the commanding officer of the regiment, he giving the commanding officer of the battalion twenty days' notice of such muster; and the commissioned and non-commissioned officers of the said battalion shall attend and be drilled the day preceding the said battalion muster, by the commanding officer of said battalion; and any officer, or non-commissioned officer failing or refusing to attend the aforesaid drills, may be arrested and cashiered, in addition to the fines

Drill the day previous.

Penalty for not attending.

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[1] This is the unexpired part of the 54th section of the act of 1820, and is applicable only to commissioned officers above platoon officers. By the law as it now stands, *platoon officers* are exempted from wearing uniform, (see next section,) but if at any time they should think proper to wear any, it should conform to that of the United States.

contained in the 1st section of the VIth Chapter of this revision: *Provided*, That all reasonable excuses shall be taken.

§ 3. The commanding officers of companies shall hold *two* company musters annually; but it shall not be lawful for them to call out the men under their respective commands, for company muster, more than twice in the course of any one year, nor shall there be but two company musters in any one year; and they shall give at least five days' notice through the orderly sergeant of the company, of any company, battalion, or regimental muster; or a notice given at one muster of the next company, battalion, or regimental muster, shall be deemed sufficient notice of the same.

1828—(21) *Sec.* 2. Company musters.

§ 4. Ten days' notice given of any battalion or regimental muster or drill, or of any court-martial for the trial of defaulters at any battalion or regimental muster or drill, through the orderly sergeant of a company, by advertisement at each election precinct, and also at each company muster-ground in said battalion or regiment, shall be deemed good and sufficient notice.

1828—(23) *Sec.* 2. Notice of regimental and battalion musters and courts-martial.

CHAPTER XI.—*Infantry Tactics.*

§ 1. THE secretary of state is authorized to contract for the transportation of the volumes of infantry tactics received by this state from the government of the United States, in the same manner as is now provided for the distribution of the laws and journals of this state.

1831—(12) Secretary of state to contract for their disiribution.

§ 2. Each major and brigadier-general, colonel, lieutenant-colonel, major, captain, lieutenant, and the several adjutants of regiments and assistant-adjutants-general of brigades, shall be entitled to receive one copy each.

Who entitled to copies.

§ 3. Each militia officer who has received, or may hereafter receive, a copy of the infantry tactics, adopted by congress for the use of the militia of the United States, shall, so soon as he ceases to discharge the duties of his office, either by resignation or otherwise, return said copy to the commanding officer of the regiment to which he may have been attached, or to the person who may succeed him in office.

1832—(19) *Sec.* 1. Officer resigning to deliver his copy to successor or colonel of the regiment.

§ 4. It shall be the duty of the commanding officer aforesaid, whenever a copy is returned to him, to receipt for the same; and on application of the person elected or otherwise appointed to fill the vacancy which may have occurred, to furnish him with the copy returned by his predecessor, and in all cases where a copy is handed over to a successor, he shall receipt for the same.

Ib. Sec. 2. Commanding officer to receipt for tactics, and take receipts on delivering them over.

§ 5. When there remains a surplus number in the clerk's office, after the officers who are now entitled to a copy by law are supplied, each ensign shall be entitled to a copy under the same rules and regulations that other officers are.

Ib. Sec. 3. Ensigns, how supplied.

§ 6. Any officer who may resign, or otherwise vacate his office as aforesaid, failing to comply with the provisions of this act, shall forfeit and pay the sum of four dollars, to be recovered before any court having jurisdiction thereof, in the name of the commanding officer of such regiment as he may have been attached to, and for the use of such regiment.

Ib. Sec. 4. Penalty for violating this act.

MILLS AND MILLERS.

1811—(4)
What mills to be deemed public.

§ 1. Every water grist-mill which shall at any time grind for toll, shall be deemed and held to be, a public mill.

Ib. Sec. 4.
Nuisances.

§ 2. It shall not be lawful for any person to erect a mill so as to overflow any other mill, or create a nuisance to the neighborhood.

1812—(5)
Sec. 1.
How to proceed when the person desiring to build a mill, owns the land on one side of the stream only.

Empannelment of seven freeholders or landholders.

§ 3. If any person owning lands on one side of any water-course, and desiring to build a water grist-mill, saw-mill, cotton-gin, or other useful water-works on such lands, and to erect a dam across the same for working said mill, shall not himself have the fee-simple property in the lands on the opposite side thereof against which he would abut his dam; or if he should have lands adjoining others through which it may be necessary to dig a ditch or canal, in order to erect such mill on his own lands, he shall make application for a writ of *ad quod damnum* to the clerk of the county court of the county wherein the lands proposed for the abutment, ditch, or canal are, which clerk shall thereupon issue such process, directed to the sheriff of the county, commanding him to summon and empannel seven freeholders or landholders, to meet upon the lands so proposed for the abutment, ditch, or canal, on a certain day to be named by the clerk, and inserted in the said writ, of which ten days' previous notice shall be given by the sheriff to the proprietor, his agent, or tenant.

Ib. Sec. 2.
Jury to view lands, and assess damages.

§ 4. The freeholders or landholders so taken, shall be charged by the sheriff, impartially and to the best of their skill and judgment, to view the land so proposed for the abutment, and to locate and circumscribe by certain metes and bounds, one acre thereof, having due regard therein to the interest of both parties, and to appraise the same according to its true value; to examine the lands above and below of the property of others, which may probably be overflowed, and to say what damage it will be to the several proprietors, and whether the mansion-house of any such proprietors, offices, curtileges, or gardens thereunto immediately belonging, or orchards, will be overflowed; to inquire whether, in their opinion, the health of the neighbors will be materially annoyed by the stagnation of the waters, and if it be a ditch or canal proposed through another's land, then to inquire what damage the same may be to the proprietor, and assess the same accordingly.

Ib. Sec. 3.
Inquest to be returned to county court, and citation to issue to all interested.

§ 5. The inquest so made and sealed by the said jurors, or a majority of them, together with the writ, shall be returned by the sheriff to the succeeding county court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the land so located or found liable to damage, if they be to be found within the county, and if not, then to their agents therein, if any they have, to show cause why the party applying should not have leave to build said mill and dam.

Ib. Sec. 4.
How the notice is to be given when owner of land is an infant, person *non compos mentis*, or nonresident.

§ 6. If the lands above proposed for the abutment, ditch, or canal, should be the property of an infant, or person *non compos mentis*, then the notices heretofore directed to be given, shall be given to his guardian, if any he hath, if not, then it shall be the duty of the orphans' court to appoint one, to whom such notices may be given; and if said lands shall belong to non-residents, the notices before required shall be published three weeks successively in the nearest gazette, which shall be deemed as good and effectual as if served on the parties personally.

Ib. Sec. 5.
When builder owns the land on both sides of the stream.

§ 7. In like manner, if the person proposing to build such mill and dam, shall have the property in the lands on both sides of the stream, yet application shall be made to the clerk of the county court, wherein the mill-house will stand, for a like writ, which writ shall be directed, executed and returned, as prescribed in the former case.

§ 8. If, on such inquest or other evidence, it shall appear to the court, that the mansion-house of any proprietor, or the offices, curtileges, or garden thereto immediately belonging, or orchards, will be overflowed, or that the health of the neighbors will be materially annoyed, they shall not give leave to build said mill and dam; but if these injuries are not likely to ensue, leave shall be given as aforesaid. [a]If any person shall think himself aggrieved by the determination of the county court, he may appeal therefrom to the next superior court for the district in which the land lies; which court shall take cognizance of the same, and confirm or reverse such order, and give such judgment therein as may appear reasonable and right.[1]

Ib. Sec. 6. When leave shall, and when it shall not, be given to build.

[a 1811—(4) *Sec.* 7.] Parties may appeal to circuit court.

§ 9. If the party applying obtain leave to build said mill and dam, he shall, upon paying respectively to the several parties entitled to receive the same, the value of the acre so located, and the damages which the jurors find will be done by overflowing the lands, above or below, or both, by the ditch or canal, become seized in fee-simple of said acre of land, and as much as may be necessary for such ditch or canal: but if he shall not, within one year thereafter, begin to build the said mill, and finish the same within three years, and afterwards continue it in good repair for public use; or in case the said mill or dam be destroyed, he shall not commence the rebuilding within one year after such destruction, and finish it within three years, the said acre shall revert to the former proprietor, and his heirs, unless at the time of such destruction of the said mill or dam, the owner thereof be an infant, *feme covert*, imprisoned, or of unsound mind, in which case he shall be allowed the same terms for commencing and completing the said mill or dam, after such disability is removed.

Ib. Sec. 7. One acre to be conveyed on payment of damages.

Time allowed for commencing and completing the work.

§ 10. When any owner of a mill established by law, may think it necessary to raise his dam, the clerk of the county court of the county wherein the pond lies, upon application to him, shall grant a second writ of *ad quod damnum*, to value the additional damage done thereby, and under the same rules and regulations as hereinbefore directed.

Ib. Sec. 8. Raising dam higher.

§ 11. It shall be the duty of all owners of mills, or persons employed in keeping a mill within this state, who shall grind grain for toll, to grind each turn in rotation as it is received in the mill, and shall grind all grain well, if water will permit, and may take and receive one-eighth part of the grain so ground for toll, and no more.

1820—(7) *Sec.* 1. To grind in rotation.

One-eighth lawful toll.

§ 12. If any person or persons shall commit any offence against the provisions of this act, he, she, or they shall, on conviction, forfeit and pay the sum of ten dollars, with costs, for every such offence, to be recovered before any justice of the peace in the county where such offence may be committed; and the money so recovered shall be paid over to the person who may sue for the same: *Provided*, That nothing in this act shall prohibit any owner of a mill from grinding his own grain at any time.

Ib. Sec. 2. Penalty.

Owner of mill may grind his own grain at any time.

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[1] The latter part of this section, although taken from an act passed in 1811, has reference to proceedings in all respects similar to those directed in the act of 1812.

NOTARIES PUBLIC.

1803—(2)
To be commissioned by the governor.

§ 1. THE governor shall appoint and commission a competent number of persons of known good character, integrity, and abilities, as notaries public of this territory;[1] to reside at such place or places within the same, as the governor shall in and by their respective commissions direct: *Provided*, That there shall not be more than two notaries appointed and commissioned to reside in any one county in this territory.

May administer oaths.
False swearing before notaries, perjury.

§ 2. The said notaries, so commissioned as aforesaid, and each of them, shall have the power of administering oaths and affirmations according to law, in all matters belonging or incident to their notarial office: and every person who shall be legally convicted of having knowingly and wilfully made or taken a false oath or affirmation before any notary, in any matter within his official duty, shall suffer the pains and penalties of wilful and corrupt perjury.

Notaries may receive proof of mercantile instruments, &c.,
and declare thereon under seal.

§ 3. The said notaries, and each of them, shall have power to receive the proof or acknowledgment of all instruments of writing relating to commerce or navigation, such as bills of sale, bottomries, mortgages, and hypothecations of ships, vessels, or boats, charter-parties of affreightment, letters of attorney, and such other writings as are commonly proved or acknowledged before notaries within the United States; and also, to make declarations and testify the truth thereof under their seal of office, concerning all matters by them done in their respective offices.

Shall keep registers of official acts, and give certified copies.

§ 4. Each of the said notaries shall keep fair registers of all official acts by him done in virtue of his office; and shall, when thereunto required, give a certified copy of any record in his office to any person applying for the same, such person paying the legal fees for such certified copy.

In case of death, &c., notarial registers to be deposited with clerk of county court.
Clerk may maintain action for them.

§ 5. In case of the death, resignation, disqualification, or removal of any of the said notaries, his registers and other public papers shall be lodged within thirty days next after such death, resignation, disqualification, or removal, in the office of the clerk of the county court of the particular county where he resided; and the said clerk may bring and maintain an action of trover or detinue for the same. Such registers or public papers shall not in any case be liable to be seized, attached, or taken in execution for debt, or for any demand whatever.

Notary to have a seal.
Legend.

§ 6. Every notary shall provide a public notarial seal, with which he shall authenticate all his acts, instruments, and attestations; on which seal shall be engraved the arms of this territory, and shall have for legend, the name, surname, and office of the notary using the same, and the place of his residence.

Notaries to give bond.
[a 1819—(14) Sec. 5.]

§ 7. Every notary on his appointment, and before he enters on the duties of his office, [a]*shall give bond with sufficient security, to be approved of by the chairman of the county court, in the sum of two thousand dollars, payable to the governor and his successors in office,*

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[1] By an act passed December 17, 1819, the justices of the county courts were required to recommend to the governor a proper number of persons to act as notaries public, who should hold their offices for the term of three years from the date of their commissions. See "County Officers,"—§ 3. By the act of June 14, 1821, the judge of the county court, and any two of the commissioners of revenue and roads, were invested with all the powers before that time belonging to the county court, in respect to the appointment of county officers. See "Commissioners of Revenue and Roads,"—§ 1.

for the faithful performance of his duties; which obligation shall be recorded in the office of the clerk of the county court, within the county where the notary may reside, and may be sued by any party or parties injured, in like manner, and with like effect, as bonds given by sheriffs and coroners, for the faithful execution of their respcetive offices.

Bond to be recorded.

Liability on bond.

1814—(17) *Sec.* 28. Where there is no notary public, or he cannot act, justice to act as such.

§ 8. Where there is no notary public, or where the notary is absent or incapable of acting, any justice of the peace may discharge the duties required of such notary by the acts of this territory, for which he shall receive the fees allowed by law for such services.

1828—(28) *Sec.* 1. Notarial protest to be evidence of the facts it purports to contain.

§ 9. The protest of a notary public which shall set forth a demand, refusal, non-acceptance, or non-payment of any inland bill of exchange, or other protestable security for money or other thing, and that legal notice, expressing in the said protest the time when given of such fact or facts, was personally, or through the post-office, given to any of the parties entitled by law to notice, shall be evidence of the facts it purports to contain, and entitle the holder of such security to the damages to which by law he may be entitled.

NOTE.—For Notaries' Fees—See "Fees,"—p. 189.

NOTES, BILLS, AND BONDS.

1807—(1) *Sec.* 2. Cotton receipts.

§ 1. WHENEVER any receipt shall be signed by the owner or owners of any cotton-gin or gins, or by their servant or agent who is usually entrusted to sign such receipts, commonly called "cotton" receipts, whereby such owner or owners, his, her, or their servant or agent, shall acknowledge to have received any quantity of cotton; the quantity of cotton mentioned in such receipt shall be construed to be, by virtue thereof, due and payable to the person or persons of whom the same is acknowledged to have been received. And such cotton receipt shall be assignable over in like manner as promissory notes are by the foregoing section of this law.[1] And the person or persons to whom such cotton receipt is assigned or endorsed, may maintain an action against the owner or owners of any cotton-gin, his, her, or their servant or agent, who signed such cotton receipt, or any who may have endorsed the same, as in cases of promissory notes aforesaid, and recover damages and costs of suit.

How assignable.

Assignee's right of action.

Ib. Sec. 3. Cotton receipts, how to be construed, and how recoverable.

§ 2. All cotton receipts given by gin-holders, in which no time of payment or delivery of the cotton therein mentioned is expressed or limited, shall be taken and construed to be payable or deliverable within four months from the date or delivery of such receipts: and on the non-payment or non-delivery of any cotton specified in any receipt, expressing the time of payment or delivery thereof, at the time so expressed; or on the non-payment or on the non-delivery of any cotton specified in any receipt not expressing the time of payment or delivery thereof, at the expiration of the said four months; the legal holder or holders of such cotton receipt shall, in either case, after lawful demand made, be entitled to recover twenty per centum damages, on the value of the cotton specified in such receipt, with costs of suit: *Provided*, That if any owner of a gin shall deliver the full amount of any cotton due on any such receipt, within fifteen days after lawful demand shall have been made by the legal holder of such receipt, or by his agent: *And provided also*, That when from default of the owner or holder of the said receipt, the necessary bagging and cordage have not been duly supplied; then, in either case, such owner of a gin shall not be liable to pay any damages whatsoever.

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[1] "As inland bills of exchange are by custom of merchants in England."

Ib. Sec. 4. Orders for the payment of money.

§ 3. When any person or persons shall, by order in writing, signed by his or her proper hand, direct the payment of any sum or sums of money, in the hands or possession of any other person or persons whatsoever, the money therein specified shall, by virtue thereof, be due and payable to such person or persons to whom the same is drawn payable, and may be put in suit against the person or persons who may draw the same, or against the person or persons on whom the same shall be drawn (after acceptance thereof) by him or them, to whom the same shall be made payable, and damages recovered thereon: *Provided nevertheless*, That no person or persons whatsoever, shall prosecute any suit against any person or persons who shall give such order for the money herein mentioned, before the same shall have been presented for acceptance, and notice given of the non-acceptance thereof to the drawer; or before the same shall have first been protested or non-accepted, and notice given thereof to the drawer before such suit shall be brought; and if any suit shall be brought on any such order before notice and refusal to pay as aforesaid, the plaintiff or plaintiffs shall be non-suited and pay costs.[1]

Holder not entitled to sue drawer until after non-acceptance by the drawee, and notice thereof to the drawer.

Ib. Sec. 5. Damages on protested bills.

§ 4. On all bills of exchange drawn upon any person resident within the United States and out of this territory, which shall be returned protested, the damages shall be fifteen per cent. on the sum drawn for,[2] and on all bills in like manner drawn upon persons resident out of the jurisdiction of the United States, being protested, the damages shall be twenty per cent. on the sum mentioned in said bills respectively, and all charges incidental thereto, with lawful interest as aforesaid, until the same be paid.

Ib. Sec. 6. Damages on bills drawn and payable within the state. To be protested in the same manner as foreign bills.

§ 5. Every bill of exchange, of the sum of twenty dollars and upwards, drawn in, or dated at, and from any place in this territory, upon any person or persons within the said territory, and payable at a certain number of days, weeks, or months, after date or sight thereof, shall, in case of non-acceptance by the drawee, when presented for acceptance; or if accepted, in case of non-payment by the drawee, when due and presented for payment, be protested by a notary public, in like manner as foreign bills of exchange, and the damages on such bill shall be ten per cent. on the sum drawn for, and shall in every other respect be regulated and governed by the same laws, customs, and usages, which regulate and govern foreign bills of exchange: *Provided*, That such protest shall, for want or in default of a notary public, be made by any justice of the peace, whose act in such case shall have the same effect as if done by a notary public.

1812—(8) *Sec.* 1. Assignment of bonds, notes, &c. [a] *Provisions extended. See* § 18.

§ 6. All bonds, obligations, bills single, promissory notes, and all other writings for the payment of money, or any other thing,[a] may be assigned by endorsement, whether the same be made payable to the order or assigns of the obligee or payee, or not; and the assignee may sue in his own name, and maintain any action which the obligee or payee might have maintained thereon previous to assignment, (1) and in all actions to be commenced and sued upon any

Assignee may sue.

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[1] Notice of *non-payment* is required only on bills and notes payable in bank,—See § 13.

[2] Ten per cent. on protest for non-payment,—See § 7.

(1) A note under seal payable to A. B. or bearer, is not transferable *by delivery* so as to enable the bearer to maintain an action on it in his own name. Sayre *v.* Lucas, 2. *Stewt. Rep.* 259.

such assigned bond, obligation, bill single, promissory note, or other writing as aforesaid, the defendant shall be allowed the benefit of all payments, discounts, and sets-off, made, had, or possessed against the same, previous to notice of the assignment, (1) in the same manner as if the same had been sued and prosecuted by the obligee or payee therein; and the person or persons to whom such instrument so payable is assigned, may maintain an action against the person or persons who shall have endorsed the same, as in cases of inland bills of exchange. (2)

What credits and sets-off are allowed against the assignee.

Assignee may sue endorser.

Ib. Sec. 5. Damages on protest.

§ 7. On inland bills of exchange, on persons without the limits of this territory, the damages on protest for non-payment, shall be ten per cent. besides legal interest, from and after the date of such protest, anything contained in the fifth section of the act to render promissory notes and cotton receipts negotiable, and for other purposes, to the contrary notwithstanding.[a]

[a] See § 4.

1832—(35) Sec. 1. Five per cent. damages on bills, &c., purchased by the bank.

§ 8. On all bills of exchange or drafts drawn by any person or persons in this state, and payable at any place within this state, and on all bills of exchange or drafts drawn by any person or persons in this state, upon any person or persons either in or out of this state, and payable at any bank or other place in the city of New-Orleans, that may be purchased or discounted by the bank of the state of Alabama or any branch thereof, and which may be protested for non-acceptance or non-payment, the damages shall be five per cent. and no more.

1828—(29) Preamble.

Whereas, there hath been much uncertainty in the decisions of the courts of this state, respecting the manner in which persons may bring suit upon any bond, bill, note, or other instrument in writing, which may be the foundation of such suit, and which bond, bill, note, or instrument may have been lost, for remedy whereof:

Sec. 1. How to recover on bonds destroyed or lost.

§ 9. *Be it enacted, &c.* That when any person may have or own, or may have had or owned, any bond, bill, note, agreement, or other instrument in writing, the right or title to the same remaining in him, her, or them, and the same shall be, or shall have been destroyed by fire, or lost by accident, such person or persons shall be authorized, upon first making oath in writing, of the loss of such bond, bill, note, agreement, or other instrument, and that the same has not been paid, satisfied, or discharged, to sue at common law for, and recover upon the same, upon making proof of the contents of such bond, bill, note, agreement, or other instrument, so lost or destroyed.

Ib. Sec. 2. Lost bonds, how made off-sets, &c.

§ 10. Any person or persons defending any suit, shall have a right to plead the loss of any such bond, bill, note, agreement, or other instrument in writing in bar, as a release, set-off, or in avoidance of any suit or suits against him, her, or them, on first making oath to the truth of such plea.

1828—(30) Preamble.

Whereas much injury has been done to the citizens of this state by means of the uncertainty of the decisions of the courts of this state in relation to the proper time at which endorsers of bills, notes, bonds, and other instruments made negotiable by endorsement, by law, shall make demand of payment of the payors of such nogotiable instrument, for remedy whereof:

Sec. 1. Days of grace, protest, and notice on bills and notes payable in bank.

§ 11. *Be it enacted, &c.* That hereafter the remedy on bills of exchange, foreign and inland, and on promissory notes payable in bank, shall be governed by the rules of the law-merchant, as to days of grace, protest, and notice; and bills drawn and payable within this state shall be deemed inland bills, and those drawn here and payable out of this state, shall be deemed foreign bills.

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(1) A cotton receipt, assigned by the payee before it is due, is not subject in the hands of an innocent endorsee without notice, to a set-off existing against the payee. Winston *v.* Moseley, 2 *Stewt. Rep.* 137.

(2) The reasonableness of notice to the endorser, is a question for the jury. Brahan & Atwood *v.* Ragland, *Min. Rep.* 85.

Distinction of foreign and inland bills.

Ib. Sec. 2. Assignee's rights.

§ 12. All other contracts in writing for the payment of money or property, or performance of any duty of whatever nature, shall be assignable as heretofore, and the assignee may maintain such suit thereon as the obligee or payee could have done, whether it be debt, covenant, or assumpsit; *Provided*, Suit be brought to the first court of the county, where the maker resides, to which suit can be brought;[a] and if he shall fail to sue the maker to the first court as herein provided for, the endorser shall be discharged from liability, unless suit shall be delayed by his consent; and no days of grace shall be allowed on any contract, (except bills of exchange and notes payable in bank,) either between the assignee and the maker, or between the assignee and the assignor.[b]

Assignee to sue maker to first court, or endorser discharged. Days of grace, when allowed.

Ib. Sec. 3. Notice of non-payment, when required.

§ 13. Notice of non-payment shall only be required on bills of exchange and notes payable in bank.

1829—(17) *Sec.* 2. *Explanation of* § 12.

§ 14. That part of the *proviso* in the second section of the before recited act, which requires suit to be brought to the first court, shall be construed to be, that suits be brought to the first court to which the writ can properly be made returnable.

Ib. Sec. 3. In what time assignee must sue maker, when the sum or balance does not exceed fifty dollars.

§ 15. Suits shall be brought on assigned or endorsed obligations, notes, or other contracts in writing for the payment of money or other thing, when the sum or balance due thereon does not exceed fifty dollars, within thirty days after the same become due and payable, or if endorsed after becoming due, within thirty days after said endorsement, unless the endorser or assignor consent in writing, that a further time may be given to the maker or obligor, or unless the maker or obligor is absent from the place of his residence, or residence unknown, or unless the assignor or endorser require, in writing, the assignee or endorsee to bring suit immediately after the maturity of said bond, note, or other instrument in writing; or if endorsed after the same become due, immediately thereafter, then and in these cases, the endorsee or assignee shall commence suit within five days thereafter; and no assignor or endorser of any bond, obligation, note, or other writing, shall be liable on said assignment or endorsement, unless suit be brought within the time prescribed by this act, or the act to which this is an amendment.[c]

Ib. Sec. 4. On return of "*nulla bona*" against maker, assignee may sue assignor.

§ 16. When judgment shall be recovered, either in the circuit or county courts, or before a justice of the peace, by the assignee or endorsee of any assigned or endorsed bond, note, or other writing, and a writ of *fieri facias* shall be returned by the proper officer "no property found," the said assignee or endorsee may commence his action against the assignor or endorser, on said assignment or endorsement, and the return on said *fieri facias* shall be sufficient evidence of the insolvency of the maker or obligor, to authorize a recovery against him, on his said assignment or endorsement.

Return, evidence of insolvency.

1832—(38) *Sec.* 1. Bonds and other instruments payable in bank, governed by the law-merchant.

§ 17. Bonds and other instruments payable in bank, shall be governed by the rules of the law merchant, as to days of grace, demand, and notice, in the same manner that bills of exchange and notes payable in bank now are.

1833—(35) *Sec.* 1.

§ 18. All the provisions of the first section of the above recited act,[d] shall be construed to extend to and include promissory notes, or other instruments made payable to a certain person or bearer, to a fictitious person or bearer, to a chattel or bearer, or to bearer only, as fully as if the same had been therein mentioned by name: *Provided*,

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[a] *Explained*, *See* § 14.

[b] *See* § 17.

[c] *The preceding act*

[d] 1812—(8) *See* § 6.

That nothing herein contained shall prevent the assignment of said note by delivery merely, so as to authorize the assignee to sue in his own name, subject always to the same payments, discounts and sets-off, that they would be, were they assigned by endorsement as notes, &c. payable to a certain person, or to a certain person or order: *Provided, however,* That nothing herein contained shall be construed to extend to bank-notes.

Act respecting assignment of notes, &c., explained Proviso. Further proviso.

OATHS—Official.

§ 1. The members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear, (or affirm as the case may be,) that I will support the constitution of the United States, and constitution of the state of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of   , according to law: so help me God."

Con. Ala. Art. 6. Oath to support the constitution, &c.

§ 2. The oaths of office herein directed to be taken, may be administered by any justice of the peace, until the general assembly shall otherwise direct.

Con. Schedule. *Sec.* 9. How administered.

§ 3. Every person appointed to any civil office in this territory, conscientiously scrupulous of taking an oath, shall make the following affirmation, previously to entering upon the duties of his office, viz: "I, A. B. being appointed to the office of   , do solemnly, sincerely, and truly declare and affirm, that I will well and truly execute the duties of my said office, according to the best of my skill and understanding, without fraud or partiality; and this I declare and affirm, under the pains and penalties of perjury."

1807—(7) *Sec.* 1. Persons may affirm.

§ 4. The oath or affirmation required by the first section of the sixth article of the constitution of this state, shall be administered to the governor by the speaker of the house of representatives, in presence of both houses of the general assembly.

1819—(1) *Sec.* 1. Speaker of H. of R. to administer oath to the governor.

§ 5. At the first session of the general assembly of this state, after every general election, [a]the secretary of state, or comptroller of public accounts, or state treasurer, shall administer the oaths of office to the members of both branches thereof: the speaker of the house of representatives shall administer the oath to the clerk, previous to entering on any other business: the president of the senate for the time being, shall also administer the oath or affirmation to the secretary of the senate, previous to his entering on the duties of his office. And whenever a president of the senate shall be elected, the same oath or affirmation shall be administered to him, by any one of the members of the senate.

Ib. Sec. 2. Members of the general assembly, how sworn. [a1830—(23)]

§ 6. All officers elected or appointed, or who shall be elected or appointed under the authority of this state, shall, before they act in their respective offices, take the oath or affirmation prescribed as aforesaid, which shall be administered by any judge or justice of the peace; the person so administering the oath hereby required to be taken, shall cause a record or certificate to be made, specifying the day and year the same was taken, which said record or certificate shall be, by said judge or justice, deposited with the clerk of the circuit court of the county in which the same shall have been taken: *Provided,* That the record or certificate of the oath or affirmation, which shall be administered to the secretary of state, attorney-general, solicitors, and

Ib. Sec. 3. Oath of other officers, how administered.

Record of oath, where to be deposited.

judges of the several circuit courts, shall be deposited in the office of the secretary of state.

Ib. Sec. 4. Penalty for not complying with this act.

§ 7. Any officer or officers failing to comply with the provisions of this act, shall forfeit and pay the sum of five hundred dollars, one-half to the treasury of this state, and the other half to the use of the person who shall sue for the same.

NOTE.—All public officers and counsellors and attorneys at law are also required to take and subscribe an oath against duelling. See "Duelling." The special oaths prescribed for those charged with any public service, will be found under the heads in which their general duties are included.

OIL.

1833—(7) *Sec.* 1. What deemed sperm oil. Test of sperm oil.

§ 1. ALL oils sold under the various names, of sperm, lamp, summer, fall and winter oils, shall be deemed and held to be pure sperm oil.

§ 2. The test of pure sperm oil is hereby declared to be Southworth's oleometer; and the same shall be the standard by which the qualities of oils sold within this state shall be ascertained.

Penalty for adulterating sperm oil.

§ 3. All oils sold under the names of sperm, lamp, summer, fall and winter oils, which shall be adulterated from pure sperm oil, shall be deemed and held whale oil; and any person or persons who shall sell to any other person or persons, any of the oil or oils, commonly known under the name or names specified in the first section of this act which have been adulterated by a mixture of whale oil, or inferior oils, shall forfeit and pay to the person or persons buying the same, for each and every such offence, the difference in value, between pure sperm oil and whale oil: and further, the vender or venders of such adulterated oils, shall forfeit and pay to the purchaser or purchasers thereof, for every offence, the sum of thirty dollars, together with costs, to be recovered before any justice of the peace within the county, where the offence shall have been committed: *Provided, always*, That if, at the time of sale, the vender or venders, disclose to the purchaser or purchasers, the amount of adulteration in the oils sold, then the said vender or venders shall forfeit nothing by the sale of the same.

Proviso.

Corporate authorities of Mobile to appoint inspectors of oil, flour, salt, and fish.

§ 4. The mayor and aldermen of the city of Mobile, are hereby authorized and empowered to appoint inspectors of oil, and also an inspector of flour, salt, and fish, for the said city of Mobile.

PARTITION.

1803—(4) Mode of proceeding to obtain partition of lands.

§ 1. ANY person being a coparcener, joint-tenant, or tenant in common, in any tract or tracts of land within this territory, may at any time apply to any one or more of the judges of the superior courts of this territory, or to any three or more of the justices of the county court, wherein such lands may lie, for a partition of such tract or tracts of land: whereupon the said judge or justices shall ascertain the number of equal shares or parts, in which such tract or tracts were, or (at the time of such application) are held by the original coparceners, joint-tenants, or tenants in common, and shall nominate three persons, not interested in the said land, as commissioners to make partition of such tract or tracts, into as many parts or shares, as the same was originally held: and the said judge or judges, or justices, shall thereupon order an advertisement to be inserted in one of the public newspapers of this territory, and in any such other public newspapers or places, as the judge, judges, or justices shall direct, for six weeks successively, to the following or like effect, he or they making such alterations or additions as the nature of the case may require:

Form of notice by judge.

By , Esquire, chief judge (or judges) of the superior courts of the Mississippi territory, or justices of the county court of the county of , notice is hereby given, that on application to me (or us) by of , who claims an undivided part of all that tract of land; (giving a description of the tract or tracts intended to be divided;) I, (or we) have nominated A. B., C. D., and E. F., commissioners to divide the said tract or tracts of land, into equal shares or parts; and unless proper objections are stated to me, (or us) at on the of next, (*which is to be at least two months from the date of the notice,*) the said A. B., C. D., and E. F. will then be appointed commissioners, to make partition of the said lands, pursuant to an act entitled, "An act for the more easy partition of lands held by coparceners, joint-tenants, and tenants in common," passed the 4th day of March, 1803.[1]

Given under our hand this day .

Judges, &c., to appoint commissioners.

§ 2. If no objections are made before the said judge or judges, or justices, on the day appointed by him or them for the purpose, to the persons nominated as commissioners, then the said judge or judges, or justices, shall, in writing under his or their hands and seals, appoint the persons so nominated, to be commissioners to divide the said land, pursuant to the directions prescribed in this act: and the judge or judges, or justices shall, in the said writing, describe the tract or tracts to be divided, and direct the number of parts or shares into which the same is to be allotted:—but if objections are made to the persons nominated as commissioners, or any of them, the said judge or judges, or justices, shall then proceed to hear and determine such objections; and in case he or they find them well founded, then to appoint under his or their hands and seals, other fit and disinterested persons, in the room of those he or they may think proper to remove.

Commissioners to be sworn.

§ 3. The commissioners so appointed, before they proceed to the execution of the powers and authority vested in them by this act, shall be severally sworn or affirmed, before one of the judges of the superior court, or any justice of the county court, that they will honestly, faithfully, and impartially make the partition intended, and perform the trust, duties, and services required of them by this act, to the best of their skill, knowledge, and judgment.

Mode of division.

§ 4. The commissioners shall cause a survey to be made in their presence, of the tract or tracts to be divided, and shall then proceed to divide the same into the number of parts or shares, directed by the said judge or judges, or justices, in the writing containing their appointment; each part or share to contain one or more lots, as the commissioners may think proper, they having due regard in the partition, to the situation, quantity, quality, and advantages of each part or share, so that they may be equal in value, as nearly as may be; and if the bounds of any tract or tracts so to be divided, shall be controverted, the commissioners are hereby directed, if such controverted part is valuable, to separate the same from the uncontroverted part, and to make partition of the tract or tracts in such manner, that a proportion

Allotments to be made both in controverted and uncontroverted part of tract.

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[1] The title of this act.

of the controverted part may be allotted to each share, as well as a portion of the uncontroverted part. And the said commissioners, previous to the said survey, shall administer an oath or affirmation to the surveyor and chain-bearers, that they will well and truly perform their respective duties honestly and impartially: which oath or affirmation any one of the said commissioners is empowered to administer.

Surveyor and chain-carriers to be sworn.

Commissioners to number the shares, and make field-book and map, keep account of time and expenses, and give notice of allotment.

§ 5. The said commissioners shall number the several parts or shares, by them laid off, from one progressively; and shall in the same manner number each lot in the several shares, if the same contain more than one lot; and shall make a true field-book, specifying the bounds and numbers of each lot; and also a map or maps of the tract or tracts, on which the several shares or lots shall be laid down and numbered; and shall keep an exact and particular account of their time expended in the execution of the duties of this act, and of the money due for the same: and also, of all expenses accruing for surveying, or otherwise, agreeably to the directions of this act. And the said commissioners shall thereupon give notice by advertisement, in manner aforesaid, for three weeks successively, that on a certain day by them named, not less than one month from the date of such notification, attendance will be given, at a place therein mentioned, and an allotment by ballot take place, of the several parts or shares, of the tract or tracts therein described, to the original coparceners, joint-tenants, and tenants in common, their heirs or assigns.

Allotment to be made by ballot.

Mode.

Judge or commissioner to make certificate of allotment.

§ 6. On application made to the said judge or judges, or justices, by any one of the parties to the partition intended to be made, the said judge or judges, or justices, shall attend at the time and place specified in the advertisement of the commissioners, and shall, with the assistance of the said commissioners, proceed to allot the several parts or shares of the tract or tracts intended to be divided, in the manner hereinafter to be described. But if no application shall be made to the said judge or judges, or justices, for his or their attendance, then the said commissioners shall on the day appointed for the purpose, proceed in a public manner to number as many tickets as there are shares of land marked on the map; which shall be put into a box, and the names of the original coparceners, joint-tenants, or tenants in common, shall be put in separate tickets, into another box; when a person appointed by the said judge or judges, or justices, or commissioners, shall proceed to draw a ticket of the names, and then a ticket of the numbers, and so proceed until all the tickets are drawn; and the share on the map bearing the number of the ticket drawn, next after drawing the ticket with the name, shall be the separate and divided share of that original coparcener, joint-tenant, or tenant in common, his or her heirs or assigns, in the land so divided: of which balloting, the said judge or judges, or justices, or commissioners, shall make a full and ample certificate, under his or their hands and seals, specifying particularly the time, place, and manner of balloting, and the said allotment of the shares.

Precepts for witnesses.

§ 7. The said judge or judges, or justices, or the said commissioners, are hereby authorized, as the case may require, to issue his or their precept, or precepts, under his or their hands and seals, commanding such person or persons, who are able to give any necessary information, to come before him or them, when and where he or they may direct, to testify by an oath or affirmation, such acts, matters, or things, as it may be necessary for the said judge, or judges, or justices, or commissioners, to investigate in execution of the trust, duties, and services required of them by this act; and to bring with him or them all such patents, surveys, maps, records, deeds, or other writings, as may be necessary to be examined, by the said judge or judges, or justices, or commissioners.

Instruments to be recorded.

§ 8. The commissioners shall transmit the writing containing their appointment, and their oath or affirmation of office, properly certified by the person administering the same, and the map and field book, and also their accounts, to the judge or judges, or justices, from whom they received their appointment; or in case of their death, resignation, or removal, then to any other judge or judges, or justices, of the same court, who, after inspecting the same, shall order the said instruments, excepting the account of expenses, to be recorded in the clerk's office of the superior court, or in the clerk's office of the county court, in which the lands lie; which shall be good evidence of such partition, and which partition shall be as valid and effectual in law, to divide and separate the said lands, as if the same had been made on writs of partition, according to the course of the common law.

Compensation of officers.

§ 9. The said judge or judges shall be allowed for the services required by this act, at the rate of two dollars and fifty cents, and said justices at the rate of two dollars a day each, while employed in the said business; and the said commissioners at the rate of two dollars a day each; and the said surveyor, at the rate of four dollars a day; and the chain-bearers and witnesses, at the rate of one dollar a day each.

In case of vacancy other commissioners may be appointed.

§ 10. In all cases of the death, resignation, neglect, or refusal of any of the commissioners to be appointed by virtue of this act, before the trust, duties, and services, hereby required of them, shall be completed, then the said judge or judges, or justices, or in case of his or their death, resignation, or removal, any other of the judges or justices shall, by writing under his or their hands and seals, appoint another commissioner or commissioners, who shall be vested with the like powers and authority, as if he or they had been originally appointed.

Expenses of partition to be divided among the shares.

On failure to pay proportion, share may be sold.

Commissioners' deed to convey title.

§ 11. After the said judge or judges, or justices, shall have ascertained the whole expense of such partition, he or they shall divide the same among the several parts or shares; which shall be paid by the persons to whom such shares were allotted, their heirs or assigns, within four weeks after the same shall be ascertained; or in default of payment of such expense, the said judge or judges, or justices, are hereby authorized, where no other property is to be found, to direct a sale to be made by the commissioners, of so much of those parts or shares, deficient in paying the expenses, as will be sufficient to pay their respective proportion thereof; together with the expenses accruing on such sale. And the said judge or judges, or justices, shall direct the same to be sold by the said commissioners, at public auction, to the highest bidder, whereof four weeks' notice shall be previously given, in one of the said newspapers, and at three of the most public places in the county in which the land lies. And the said commissioners' deed to the purchaser shall pass as good a title for the separate enjoyment of the same, as if all the owners and claimants of shares, of the entire tract divided, had joined therein.

Proceedings under this act not to affect paramount title.

§ 12. Nothing in this act contained, shall be so construed as to tend to injure, prejudice, defeat, or destroy, the estate, right, or title of any person or persons claiming such tract or tracts of land, or any part thereof, or anything therein by title paramount or superior to the title of such coparceners, joint-tenants, or tenants in common, among whom partition is to be made.

1806—(1) *Sec.* 43. Mode of obtaining par-

§ 13. When any person by last will and testament, shall devise his or her real estate, or any part thereof to two or more devisees, not ascertaining the metes and boundaries of each devisee's share, any of tition of a joint devise, &c., one of the devisees or heirs being under age.

whom being under age, and their shares being undivided, such devisees may apply to the orphans' court of the county in which the said last will and testament was proved and recorded; and the said court, on application of any one of the said devisees, may order a division thereof to be made, agreeably to the true intent and meaning of the said last will and testament; and each devisee's share shall be ascertained by three or five indifferent freeholders, appointed by the court, and a report made thereupon by them, or a majority of them, under their hands and seals, to the next orphans' court, after such division shall be made; such report being approved by the said court, and entered on the records thereof, shall be conclusive to all parties concerned. And when the real estate of any person dying intestate, shall descend to two or more children, or other heirs of such intestate, one or more of whom being under age, the said court, on application, may order and direct a division of such real estate agreeably to the law of descents; the metes and bounds of each heir's share to be ascertained by three or five indifferent freeholders, appointed as aforesaid; and whose report, or that of a majority of them, returned, approved, and recorded as aforesaid in case of devisees, shall be conclusive on all parties concerned: *Provided*, That in each case the report of the said freeholders shall be returned under oath: *And provided also*, That the devisees or heirs in this territory, or the guardians of such as are under age not applying for such division, shall have such notice of the time and place of the meeting of the said freeholders, for the purpose of making the said division, as the court shall direct.

Provisos.

PATROLS.

1819—(18) Who liable to do patrol duty.

§ 1. Every male owner of slaves, and all other persons below the rank of ensign, liable to perform military duty, are hereby declared liable to perform patrol duty, as hereinafter directed; but shall be at liberty to send a substitute to perform said duty in their stead.

Captains of militia companies required to detail patrol detachments.

§ 2. It shall be the duty of every captain of infantry in this state, to cause to be made a complete list of all the male persons within the bounds of his company, liable to perform patrol duty; including in the said list every person liable as aforesaid, whether belonging to the militia company under his command, or to any other company; and in the said list the said captain shall cause to be included every person liable as aforesaid, who shall come to reside within said bounds, within ten days after such person shall reside therein; and it shall be their duty to regulate patrols within their own companies, by making, at every company muster of their respective companies, by rotation, a list of patrol detachments, and appoint to every such detachment a proper officer or leader: which detachments shall severally consist of not less than three, nor more than five men beside their leader, who shall perform the duties of patrols, once in each week, for the term of two months, or until the next company muster, except at the last muster in each year, at which time it shall be the duty of the captain to appoint two patrol detachments, as also to designate the time each detachment shall serve: *Provided*, No one shall be compelled to serve out of his regular routine of duty.

Of what number composed, and term of duty.

Duties of patrol detachments.

§ 3. It shall be the duty of each patrol detachment, to visit all negro quarters, all places suspected of entertaining unlawful assemblies of slaves or other disorderly persons unlawfully assembled, and upon finding such disorderly person or persons, to take him, her, or them, if free, before the nearest justice of the peace of such county, or make report thereof to said justice, so that he, she, or they, may be dealt with according to law; and if any slave or slaves shall be found so assembled, or strolling without a pass, or some token from his or her owner or overseer, the said patrol may give any such slave any number of lashes, not exceeding fifteen; and if there be reason to suspect any such slave or slaves to be runaway from his or her owner, they shall take such slave or slaves before the nearest justice of the peace for such county, to be dealt with according to law, and be allowed and paid by the owner, for all runaway slaves so taken up, the sum of ten dollars, and shall also be entitled to receive all other fines to which parties may be liable, which they may bring before any jurisdiction having cognizance thereof.

Runaway slaves.

Fines appropriated to patrol.

§ 4. The officer or leader of every patrol detachment, shall give notice to every person thereto belonging, of the time and place of meeting to patrol, and every person, who, after such notice, shall fail to attend or send a substitute in his place, or shall, after attendance, neglect a faithful performance of patrol duty, shall be returned by the patrol officer or leader, to the captain in whose bounds he may reside; and should the said defaulter, so returned, be subject to do militia duty, the captain shall return said defaulter to the next court-martial, who shall be fined at the discretion of the court-martial, in any sum not exceeding ten dollars; one-half thereof shall, when recovered, accrue to the said officer or leader, and the other half thereof to the other persons who shall have performed patrol duty in the detachment wherein the default shall have occurred; but should the defaulter so returned to the captain not be subject to do militia duty, the captain shall forthwith return said defaulter to some justice of the peace for said county, who shall issue his warrant within ten days thereafter, requiring such defaulter to appear before him; and in case the said defaulter shall not appear before him, it shall then be the duty of the said justice, on proof of service of the process, and on proof of the service of the notice required by the preceding part of this section, of the time and place of meeting to patrol, to give judgment and issue execution against the said defaulter, for the sum of five dollars with costs, to be distributed as before named in this section: *Provided*, That if a sufficient excuse be given to the said justice or court-martial, if such excuse be given at the hearing, then the said justice or court-martial shall not give judgment; nevertheless the said defaulter shall pay costs.

Leader of patrol to give notice of time and place of meeting to patrol.

Defaulters, how punished.

Excuses to be heard.

§ 5. The officer or leader of every patrol detachment shall, for neglecting to give the notice hereinbefore required, or neglecting to prosecute for the forfeiture, as hereinbefore directed, or for neglecting any other duty required by this act, be returned to the captain, by any one of the detachment, wherein the default shall have occurred; and it shall be the duty of the captain to report the said defaulter to the next court-martial, who shall be fined in a sum not exceeding ten dollars: the said forfeiture, when recovered, shall be divided between those persons who shall have performed patrol duty in the detachment wherein the default shall have occurred; [a]and if any commanding officer of any militia company shall knowingly neglect for three months to make such return, or shall neglect or omit any other duty by this act required, or the act to which this is an amendment, he shall forfeit twenty dollars to the use of any person suing for the same.

Liability of leaders of detachments for neglect of duty.

[a 1[illegible]—(9) *Sec.* [illegible]]

Penalty on commanding officer of company, &c.

§ 6. If the regular muster of any military company shall not be held at the appointed time, it shall be the duty of the commanding officer of the company, to appoint such detachment of patrol, as shall be next

Patrol to be appointed, though no muster.

in routine, and inform the officer or leader thereof, who shall forthwith act accordingly.

Leaders responsible for the orderly conduct of their detachments. Proviso.

§ 7. It shall be the duty of the captains of companies to appoint the officers or leaders of patrols, from the most discreet persons within their bounds, which officer or leader shall be accountable for the orderly conduct of the detachment: *Provided*, That if he shall forthwith report any disorderly conduct or disobedience of any patrol-man of his detachment, agreeably to the third section of this act, then such disorderly or disobedient patrol-man shall, exclusive of the foregoing fine, moreover be liable to pay any damages which may happen to any individual in consequence of his disorderly conduct, to be recovered before any tribunal having cognizance thereof.

Patrols, &c., sued, may plead the general issue, and give this act in evidence.

§ 8. If any commanding officer, constable, patrol-man, or other person, shall be sued, arrested, or impleaded, for any matter or thing which he shall do or cause to be done, by virtue of, or in pursuance of this act, it shall be lawful for every such captain or other officer or person, to plead the general issue, and give this act and the special matter in evidence on the trial; and if a verdict shall pass against the plaintiff or plaintiffs, or if they shall be nonsuited in his or their action or suit, the court where such action shall be pending, shall tax and allow the defendant, his or their double costs, in every such suit or action.

Defendant prevailing, allowed double costs.

Patrols to go in search of slaves harbored.

§ 9. If any of the patrols as aforesaid, under this act, should receive any information of any person or persons harboring any negro or negroes, or slaves, belonging to any other person or persons whatsoever, they shall immediately, on receiving any such information, summon together their patrols, and go immediately in search of said negroes, and if found, take them forthwith to the nearest justice of the peace: and if no owner comes and claims said slave or slaves, it shall be the duty of said justice to commit such slave or slaves to the common jail of the county.

How dealt with when taken.

1812—(9) *Sec.* 5. Person interested in forfeitures competent witness.

§ 10. Any person interested in any of the forfeitures prescribed by this act, or by the act to which this is an amendment, shall be a competent witness in any suit for any of the said forfeitures.[1]

PHYSICIANS.

1823—(19) Physicians to be licensed.

§ 1. No person shall be allowed to practise physic, or surgery, or any branch thereof, or in any case to prescribe for the cure of diseases for fee or reward, unless he shall have first been licensed to do so, in the manner hereinafter prescribed.

Bonds, &c., taken by physicians not licensed, void.

§ 2. All bonds, notes, promises, and assumpsits made to any person or persons not licensed in manner hereinafter mentioned, the consideration of which shall be for services rendered as a physician or surgeon, in prescribing for the cure of diseases, shall be utterly void and of no effect.

Medical boards established. [1830—(9) *Sec.* 1. 1831—(4) *Sec.* 1.] To meet annually for granting licenses.

§ 3. In order to the proper regulation of the practice of physic and surgery, there shall be established *five* boards of physicians; one at Huntsville, one at Tuscaloosa, one at Selma, one at Clairborne, and one at the city of Mobile; to consist of *five* members each, to be elected by joint vote of both houses of the general assembly; which boards shall meet annually for the purpose of examining all applicants for a license to practise medicine; and if on such examination they are found competent, shall grant such applicants a license to practise physic and surgery: *Provided*, That two members of either of the said boards shall constitute a quorum to make such examination, and to grant such license: *And provided also*, That any one of the members of either of the medical boards shall be authorized, during the recess of the annual meetings, to examine any applicants, and if on examination deemed competent to practise medicine and surgery, shall grant them permission to practise until the next annual meeting of the board, of which the physician granting such permission is a member, to whom said applicant shall apply for a license to practise medicine and surgery, and if refused, shall not be again permitted to practise except by a license from one of the boards: *Provided however*, That no member of the legislature shall be elected a member of the medical board, during the term for which he was elected a member of the legislature.

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[1] The sections inserted from the act of Dec. 18, 1812, allude to duties and forfeitures contained in that and a prior act, all of which, with a modification as to form only, are incorporated in the act of Dec. 17, 1819, which forms the body of this title.

Quorum.

Temporary permits.

Members of legislature ineligible.

Fees.

[1828—(42) *Sec.* 3. 1830—(9) *Sec.* 23.]

How appropriated.

§ 4. The meetings of the said boards respectively, shall be held on the first Monday in December annually: and the said boards shall be entitled to demand and receive of every applicant, the sum of five dollars for each examination; five dollars for every license or diploma and five dollars for granting permits during the recess of their regular meetings; to be appropriated in any manner that a majority of the medical board may think proper.

Officers and by-laws.

[a 1828—(42) *Sec.* 5.]

Vacancies.

§ 5. The said medical boards may elect all such officers, and frame all such by-laws as may be necessary to carry this act into effect; [a]and when any vacancy may happen in any of the boards by death or otherwise, a quorum may fill the vacancy until the meeting of the next general assembly, when such vacancy shall be filled by a joint vote of both houses.

Members absent at two annual meetings, seat vacated.

Licenses may be granted in medicine or surgery alone.

§ 6. If any of the members by this act appointed to constitute the board of physicians to meet at the several places hereinbefore appointed, shall fail to attend the meetings of the said boards of physicians for two successive annual meetings of the same, he shall be no longer considered a member thereof; and it shall be the duty of the presiding member at each meeting of the said boards to note the defaulters at such meeting: *Provided however*, That this act shall not be so construed as to prevent either of the medical boards hereinbefore appointed, from granting a license to any person or persons to practise medicine or surgery alone.

This law not to affect physicians already in practice.

§ 7. This act shall not be so construed as to include or operate upon any person who may have been engaged in the practice of medicine or surgery in this state, previous to its passage.

Penalty for violating this act, 500 dollars.

Proviso.

Members of board to be sworn.

§ 8. Any person who shall violate any of the provisions of this act, shall forfeit and pay the sum of five hundred dollars, to be recovered in an action of debt, in any court of record in this state, by any person who may sue for the same; one-half thereof to be paid to the said informer, and the other half to be paid into the treasury of the county in which such suit may be tried: *Provided*, That nothing contained in the foregoing act shall be so construed, as to prevent persons from practising as doctors of medicine, who may have received a diploma from any regularly constituted medical institution within the United States: *And provided further*, That such person shall have been engaged in the practice of medicine within two years previous: *Provided further*, That the said board shall, before they enter on the duties of their appointment, take and subscribe an oath before some justice of the peace, to discharge the duties imposed on them by this act, without favor, partiality, or prejudice.

1826—(19) *Sec.* 1. Graduated physicians and surgeons may be enrolled without examination.

§ 9. Any physician or surgeon, who may have graduated at any regular medical university, shall be allowed to enrol his name with any of the medical boards of this state, on producing his diploma, without examination.

1832—(28) *Sec.* 1. Thompsonian system licensed.

Proviso.

§ 10. The second and eighth sections of an act to regulate the licensing of physicians to practise and for other purposes therein named, passed 22d December, A. D. 1823, are hereby so far repealed, that neither of the aforesaid sections shall be so construed as to prevent any person or persons from practising medicine on the Botanical system of Doctor Samuel Thompson, and recovering reasonable compensation for the same: *Provided,* That if the said persons practising on the Thompsonian or Botanical system shall bleed, apply a blister of Spanish flies, administer calomel or any of the mercurial preparations, antimony, arsenic, tartar emetic, opium, or laudanum, they shall be liable to the penalties of the act to regulate the licensing of physicians to practise, and for other purposes therein named, approved 22d December, 1823.

POOR.

1807—(23) Overseers of poor to be appointed annually in each captain's beat, by county court. [a 1828—(48) *Sec.* 1.]

Who exempt from serving.

Overseer required to take oath.

§ 1. It shall be the duty of the justices of the county courts, in their respective counties, annually to appoint one or more overseers of the poor in each captain's district, to serve for the term of one year, or until another overseer shall be appointed, [a]and the judge and commissioners may fill vacancies in the office of overseers of the poor as often as they may occur; and any person so appointed, who shall refuse or neglect to serve as overseer of the poor, unless disqualified by age or infirmity, of which the justices shall judge, shall forfeit and pay fifty dollars, to be recovered with costs, by action of debt, in any court having competent jurisdiction, for the use of the county: *Provided,* That no person holding any office or employment under the government shall be compelled to serve as overseer of the poor, so long as he holds the same. In case of the refusal or inability of any person to serve as overseers of the poor, it shall be lawful for any three justices, during the vacation of the county court, to appoint a new overseer of the poor for the remainder of the year, in room of the said person unable or refusing to serve; which new overseer shall be subject to the same duties and penalties which were obligatory upon the person appointed overseer by the county court: and every overseer so nominated and appointed shall, immediately after his nomination, take an oath or affirmation before any judge or justice, that he will discharge the duties of overseer of the poor, truly, faithfully, and impartially, to the best of his knowledge and ability.

Overseer's duties.

§ 2. It shall be the duty of the overseers of the poor, each in his respective district, to provide for the indigent, lame, blind, and others, not able to maintain themselves; and may also provide houses, nurses, and physicians, in such cases as they shall think necessary; the expenses of which shall be provided for in the annual county levy: and it shall be lawful for the overseers of the poor to contract with any person or persons for keeping, maintaining, and employing any or all such poor persons, and take the benefit of their work, labor, or service, towards their maintenance and support. If any poor person shall refuse to be lodged, kept, maintained, and employed, in such manner as the overseers shall direct, he or she shall be struck off from the overseer's list, and shall not be entitled to receive relief from the overseers during such refusal. The said overseers shall make fair entries in a book, of the names of all the poor within their respective districts, with the time when each of them became chargeable, together with the amount of all charges, costs, and expenses incurred under the direction of the said overseers; which books and accounts they shall be obliged to present twice in every year, for the inspection of the justices assembled in their county courts. And if the said justices shall approve the accounts of any such overseers, they shall issue a certificate to that effect, directing the county treasurer to pay the amount thereof to such person or persons to whom the same may be lawfully due.

To make entries of all expenses, and render account twice a year. Accounts to be paid out of county treasury.

§ 3. If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, which may have been refused by the overseer, such person may apply to the county court, or during the recess, to any two justices, who are authorized, if they shall think proper, to direct the overseer to receive him or her upon the list of the poor, which overseer is bound to yield obedience to the directions of the said court or justices.

Poor persons refused relief, may apply to county court.

§ 4. The overseers shall take measures to prevent the poor from strolling from one district into another, and may make complaint before any justice that any poor person is come into their county, and is likely to become chargeable thereto; whereupon it shall be lawful for such justice, by warrant under his hand, to cause such poor person to be removed to the county where he or she was last settled: *Provided*, That such poor person hath not been resident for six months last past in the county from which it is proposed to remove him or her. But if such poor person be sick or disabled, and cannot be removed without danger of life, the overseer shall provide for his or her maintenance and cure, at the charge of his or her county, and after recovery, shall cause him or her to be removed; and the county wherein he or she was legally settled, shall repay all charges occasioned by the sickness, maintenance, and cure of such poor person, and for removing him or her; and also all charges or expenses if such person shall die before removal: and it shall be the duty of the overseer of the district to which the person belongs, to receive and provide for the person or persons so removed; and in case of refusal, the said person or persons may apply to any two justices of the county for relief, as hereinbefore directed. The overseer who shall have made the disbursement, being furnished with a certificate of the said expenditure by the justices of the county court of his proper county, shall apply to the justices of the county court to which the said poor person or persons shall belong; which said justices last mentioned, are hereby directed to draw an order on the treasurer of their proper county for the reimbursement of the said expenses.

Poor persons leaving their proper districts, or counties, how dealt with.

§ 5. Where any dispute shall arise respecting the residence of any poor person, the court of any county adjacent, and not interested, is authorized to take cognizance thereof, and determine the same.

Disputed residences, how tried.

§ 6. The overseers of the poor shall make returns to the county courts, twice a year, of the poor orphans in their districts, and of such children within the same, whose parents they shall judge incapable of supporting them, and bringing them up in honest ways. The said courts are hereby authorized to direct the said overseers, or either of them, to bind out such poor orphans and children apprentices to such person or persons whom the court shall appoint, until the age of [a]*twenty-one* years, if a male; or sixteen years, if a female. The per-

Poor orphans, &c., to be bound out.

[a 1809—(5) Sec. 1.]

Terms of indenture.

son to whom such apprentice shall be bound, shall engage by a covenant, to be entered in the indenture, to provide the apprentice with a sufficiency of good and wholesome provisions, necessary clothing, washing, and lodging; to teach the said apprentice the business or occupation which he pursues for a livelihood, and also to read, write, and to cipher as far as the rule of three; and at the expiration of said apprenticeship, to furnish the said apprentice with two complete new suits of clothing. It shall be lawful for the said court, upon the complaint of the overseers of the poor, or of any apprentice, by themselves or friends, against their masters or mistresses, to hear and determine; and if it shall appear to the satsfaction of the court, that such complaint be well founded, and of sufficient magnitude to make a removal necessary, the court shall have power to remove such apprentice, and bind him or her to such other person as they shall think proper.

County court, for sufficient cause, may remove apprentice, and bind to another.

Ib. Sec. 8. Who to maintain their poor relations.

§ 7. The father and grandfather, the mother and grandmother, and the descendants of any poor, old, blind, lame, and impotent person, or other person not able to work, being of sufficient ability, shall, at their own charge, relieve and maintain every such poor person as the justices shall direct at their next county court, in their respective counties, or the corporation courts in their respective towns, on pain of forfeiting eight dollars for each month they shall fail therein.

Ib. Sec. 9. Penalty for bringing any infant, lunatic, &c., into the territory.

§ 8. If any person commanding a ship, vessel, or boat, shall import into this territory, or bring to the shores thereof, any infant, lunatic, maimed, aged, infirm person, or vagrant, who may be adjudged likely to become chargeable to the territory, it shall be lawful for any justice of the county court, or for any magistrate of a corporation court, to compel such person commanding such vessel, to give sufficient security to indemnify the inhabitants of this territory from any charge that may come, or be brought upon them, by such infant, lunatic, maimed, aged, infirm, or vagrant person, coming into, or living within this territory, or otherwise to transport such person beyond the limits of this territory.

1807—(18) *Sec.* 14. Children of criminals in certain cases to be bound out.

§ 9. Whenever, on any criminal prosecution, it shall appear to the satisfaction of the court, that there can be no reasonable expectation, that the family of the prisoner will be brought up in honest courses, it shall be the duty of such court to certify the same to the overseers of the poor for the district in which such family may reside, provided the same be within the limits of the jurisdiction of such court; and the said overseers shall thereupon bind out the children of such person, to honest, respectable, and virtuous citizens, for the same periods of time, and under the same conditions for their instruction and maintenance, as in other cases of orphans and poor children, and return the indentures to the next county court, and likewise certify to the said superior court, their doings therein.

1807—(24) Preamble.

Whereas, it is intended that impartial justice should be had and administered to all the citizens of this territory, as well to the poor as to the rich: And whereas, poor citizens are not of ability or power to sue according to the laws of this land, for redress of injuries and wrongs to them done, as well concerning their persons and inheritance as other causes:—For remedy thereof, in behalf of the poor persons of this land, not able to sue for their relief after the course of the law:

Sec. 1. Poor persons to be allowed writs, counsel, &c., free of charge.

§ 10. *Be it enacted, &c.* That every poor person who shall have cause of action against any person within this territory, shall have, by the discretion of the court, before whom he would sue, writ or writs original, and writs of subpœna, according to the nature of his cause, nothing paying for the same; and the said court shall direct their clerk to issue the necessary process; shall assign to him counsel learned in the laws, and appoint all other officers requisite and necessary to be had for the speed of the said suit, who shall do their duties without any reward for their counsels, help, and business in the same.

§ 11. The judge of the county court, together with the commissioners of roads and revenue, in each county, shall annually set apart such portion of the county tax as they shall deem necessary, for the purpose of creating a fund for the support of paupers within such county; which fund shall be kept separate by the county treasurer; and no money shall be drawn or paid out of said fund, except by order of said judge, for the support of the poor within the county; and in that case it shall be paid to an overseer of the poor, to be by him applied to the purpose for which it is intended: and all overseers aforesaid are hereby required, at the end of the term for which they are appointed, to render an account to the said judge and commissioners, of the manner in which he or they have disposed of the sum or sums of money by them received out of the poor fund the preceding year; and in case any overseer shall neglect or refuse to render such account to the judge and commissioners, as hereby required, he shall forfeit and pay the sum of ten dollars for every such neglect or refusal, to be sued for by the county treasurer, for the use of the poor of each county.

1823—(4) *Sec.* 1. Part of county tax to be annually set apart as a poor-fund.

Overseers to render account of expenditures.

Penalty for failing.

§ 12. It shall be the duty of all overseers of the poor, in every county in this state, to make just and true returns of all poor persons under their charge and care, to their county courts respectively, on or before the court to be held in the month of August in each year; which list shall contain the situation of the paupers, the amount of money necessary to support the same, together with such other circumstances as they may think proper, so as to enable such court to know correctly what sum it may be necessary to appropriate in compliance with "An Act to set apart a separate fund, for the support of the poor in each county," passed January 1st, 1823.[a]

1823—(25) *Sec.* 1. Overseer to return list of paupers, &c.

[a] *The preceding act.*

§ 13. If any overseer of the poor shall fail or refuse to make the report required by the foregoing section, without being able to render a satisfactory excuse for such failure, to be judged of by such court, either by personal appearance, or by affidavit by the succeeding court, such overseer shall be liable to a fine of ten dollars by sentence of such court.

Ib. Sec. 2. Penalty for not making return.

PRISONS AND PRISONERS.

1. Commitment, guarding, and expenses of prisoners.
2. Enlargement by *Habeas Corpus.*

1. *Commitment, guarding, and expenses of prisoners.*

§ 1. Every warrant, mittimus, writ, process, or precept of any kind, or the attested copy thereof, by which any prisoner may be committed to, or enlarged from any jail in this territory, shall be regularly filed in its order of time, and safely kept by the sheriff, or keeper of the jail under his direction; and upon the death, removal, or resignation of any sheriff, every such warrant, mittimus, writ, process, and precept, or copy thereof, filed and kept as aforesaid, shall be delivered over to his successor in office, on demand by him made, under the penalty of three hundred dollars, to be recovered of the sheriff so re-

1807—(26) Mittimus, writs, &c., to be filed;

and delivered to officer's successor.

signed or removed, or his executors or administrators, in case of his death, one-half to the use of the person suing for the same, and the other half to the use of the proper county.

County court to inquire into condition of prisons and prisoners.

§ 2. It shall be the duty of the justices of the county court, at the beginning of every stated court, to inquire into the state of the prisons in their respective counties, with regard to the sufficiency of such prisons, and the condition and accommodation of the prisoners; and they shall from time to time take such legal measures as may best tend to secure the prisoners from escape, sickness and infection, and to have the jails cleansed from filth and vermin; and the sheriff shall keep separate rooms for the sexes, except where they are lawfully married, and be responsible that his jailer at all times provides proper meat and drink for all criminals committed to the jail of the county, if such prisoners have no other convenient way of supplying themselves with provisions, which shall always pass to them through the hands of the keeper.

Maintenance of prisoners.

Every person committed to prison in a civil case, or for a criminal offence, may furnish his or her own support and maintenance; and the sheriff or jailer shall admit any person who will administer to the wants of such prisoner, to furnish him or her with necessary support and maintenance; in such manner, however, as not to aid any escape, or endanger the security of the prison.

Any person imprisoned in a civil or *qui tam* action, shall furnish his or her own sustenance, or pay the jailer fees for the same, until lawfully discharged; and when any prisoner shall be committed to jail in a civil action, and shall provide for his or her own support, in any way wherein the sheriff or jailer shall have no concern, it shall be the duty of the jailer or prison-keeper, to admit to the wicket-grate, or small window of the prison, in which such prisoner shall be confined, any person who may come to administer to the wants of such prisoner, by furnishing him or her with meat or drink, which shall be conveyed through such small window or grate, that the security of the prison be not too frequently exposed by opening the doors thereof.

State to be charged with criminal's maintenance in case of his inability to discharge jailer's fees.

§ 3. Every person confined for a criminal offence, who may be unable to support him or herself in prison, shall be supplied by the sheriff or jailer, under his direction, with daily sustenance; and in case of conviction and inability to discharge the fees for sustenance, or in case of acquittal, and the fees be not taxed on the prosecutor, the same shall be discharged by the territory; and no fees, expenses, or perquisites whatever, except what may be allowed by law, shall be taken or received of a prisoner, or charged against the territory.

Jailer not to allow prisoners any intoxicating liquors.

§ 4. No sheriff, jailer, or person having the care or keeping of any jail, shall sell or dispose of, to any person or persons under arrest or in prison, any wine, rum, brandy, whisky, or other strong or intoxicating liquor, under the penalty of twenty dollars for each offence, to be recovered before any magistrate of the proper county; one-half to the person suing for the same, and the other half to the use of the county.

Penalty.

1807—(16) *Sec.* 1. Guard may be summoned when necessary.

§ 5. When any person or persons accused of treason, felony, or other crime or misdemeanor, shall be committed to the jail of any county in this territory, and the sheriff shall have cause to suspect such person or persons will attempt to escape, such sheriff is empowered and required to apply to any justice of the quorum of the county where such person or persons may be confined, who shall, on such application, issue his warrant directed to said sheriff, for a sufficient guard for securing such prisoner or prisoners, so long as he, she, or they continue in jail.

§ 6. All expenses which may be incurred for guards employed pursuant to the second section of "An act directing the manner of employing proper guards for the safe-keeping of criminals, in the several counties of this territory, and for other purposes," and all and every other legal expense which shall accrue from the want of a good and sufficient jail, shall be paid out of the treasury of the proper county.[1]

1812—(6) *Sec.* 1. Expenses occasioned by insufficient jails to be paid by the county.

§ 7. It shall be lawful for any judge, justice of the quorum, or justice of the peace, when any person or persons shall be brought before him, charged with any criminal offence wherein bail is not admissible, or where such prisoner or prisoners shall neglect or refuse to give security for his, her, or their appearance, to commit the said prisoner or prisoners to the nearest jail of some adjacent county, provided there is not a sufficient jail in the county in which the offence was committed, there to be kept until the court shall sit in the proper county for the trial of such prisoner or prisoners; and it shall be the duty of the jailer to receive any prisoner or prisoners sent from any county in which there is not a sufficient jail for safe-keeping, upon the mittimus of any justice of the quorum or peace, of the county from which such prisoner or prisoners are sent.

1815—(8) *Sec.* 1. Where jail is insufficient, prisoner may be committed in another county.

§ 8. Whenever it may be deemed expedient to call out a guard for the guarding of any prisoner or prisoners, such guard shall receive the sum of one dollar each, for every day they may serve, to be allowed by the county court, upon the sheriff's certificate, to be paid out of the treasury of the county where the offence was committed.

Ib. Sec. 2. Guard allowed one dollar per day. How paid.

§ 9. The common jail of each county shall be the jail of the circuit court for said county: *Provided however*, That nothing in this act contained, shall be so construed as to prevent civil officers, judges, justices, &c. from transferring prisoners to the nearest jail which is good and sufficient, when the jail of the county where such prisoner may be arrested, shall be considered insufficient.

1819—(6) *Sec.* 11. Jails of counties to be jails of circuit courts. Proviso.

§ 10. When it shall be necessary to remove any prisoner from one county to another, for trial, under an order of court for a change of venue, it shall be lawful for the jailer, sheriff, or such other person whose duty it shall be to remove said prisoner, to draw up his account against the state, for the services performed, including the necessary expenses of travelling to and from the respective counties, which account shall be sworn to before some acting justice of the peace, and certified by the court in the same manner as accounts are now required to be certified for keeping prisoners in the public jails of this state.

1827—(13) *Sec.* 1. On change of venue, expense of conveying prisoner to another county to be paid by the state.

§ 11. When such services are performed in apprehending persons fleeing from justice charged with high crimes and misdemeanors against the state, and who shall be apprehended in any other than the county where the offence was committed, it shall be lawful for the officer, jailer, or other person apprehending such persons, to produce evidence satisfactory to the court before whom the said offences are cognizable, of the performance of such services, and the necessary expenses incurred in the performance of the same: and the said court may allow reasonable and fair compensation, which shall be certified by the court, and the same shall be chargeable on the state treasury, under such rules and regulations as are prescribed for the payment of other charges against the state.

Ib. Sec. 2. Expenses of apprehending fugitives from other counties, to be certified by the court on proof, and paid by the state.

§ 12. When the solicitor of any circuit shall have good reason to believe that the keeper of any jail has been guilty of cruel and improper treatment towards any prisoner or prisoners, either by beating, or failing to furnish good and wholesome diet, it shall be his duty to

1824—(14) *Sec.* 1. Jailer liable to be fined for maltreating prisoners.

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[1] See "County Buildings,"—§ 5.

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commence a proceeding against said keeper in the nature of an information, who, upon being found guilty by a jury, shall be fined at the discretion of the court, any sum not less than five, nor more than one hundred dollars.

1807—(18) *Sec.* 13. Jailer to certify names of prisoners to the first court after commitment.

§ 13. It shall be the duty of every sheriff and other person having authority or power of keeping a jail, or of prisoners for felony, to certify the names of all such prisoners in his keeping, and of every prisoner to him committed for any criminal offence, at the next court having cognizance thereof, there to be calendered before the judge for the deliverance of the said jail, whereby he may proceed to make deliverance of such prisoners according to law.

1811—(11) *Sec.* 22. Jailer may discharge prisoner on civil process, if fees are not paid by plaintiff, after ten days' notice.

§ 14. Whenever any person may be committed to jail in any civil suit, whether upon original, mesne, or final process, the jailer of such county shall be entitled to demand and receive of the plaintiff or plaintiffs, weekly, all fees that may become due to him, as well as for finding sustenance for such prisoner; and in case of failure on the part of the plaintiff or plaintiffs to pay the same, such jailer shall be authorized to discharge such prisoner out of jail: *Provided*, That the jailer shall have given to such plaintiff or plaintiffs, his or their agent or attorney, ten days' previous notice thereof:[1] *Provided also*, That such discharge shall not go to exonerate any defendant, so discharged out of custody, from the debt for which he had been confined, but the same shall be, as if the defendant had never been committed to jail.

1830—(1) *Sec.* 1. Jailer not compelled to receive prisoner under process from U. S. courts, unless there be a good jail in the county.

§ 15. The keepers of the common jails in the several counties of this state, shall not be compelled to receive any prisoner committed upon process from the courts of the United States, unless at the time of such commitment, there be a good and sufficient jail in the county in which such prisoner may be confined; but if there be a good and sufficient jail, then the keeper of any such jail is required to receive such prisoner, under the like pains and penalties for neglect of duty, as they now are by law, in the case of prisoners committed under the authority of the state.

Ib. Sec. 2. U. S. marshal responsible for all fees.

§ 16. When any prisoner shall be so committed at the suit of the United States, the marshal making such commitment shall become individually responsible to the jailer for all prison fees, as well as for the fifty cents per month for each prisoner, agreeably to a resolution of the congress of the United States, of the twenty-third of September, 1789.

Ib. Sec. 3. Debtors committed on process from U. S. courts, subject to be discharged as other debtors.

§ 17. When debtors on judgments in civil causes obtained in courts of the United States, shall be committed to any of the jails of this state by process of execution, unless the plaintiff in such execution shall comply with the existing laws of this state, at the time, such debtor may be discharged from prison, in the same manner as though such debtor had been confined under process issuing from the courts of this state.

Ib. Sec. 5. When U. S. is not plaintiff, marshal to secure sheriff the prison fees.

§ 18. The several sheriffs of the several counties in this state, in which there may be sufficient jails for the safe-keeping of prisoners, shall not be bound to receive from the marshal for the district of Alabama, any prisoner on process from the district courts of the United States, in civil suits when the United States shall not be plaintiff, unless the marshal shall secure such sheriff for the amount of prison-fees.

1833—(42) *Sec.* 1. Pay for victualling slave.

§ 19. It shall not be lawful for any jailer to charge more than twenty-five cents per diem, for victualling any slave whilst confined in jail.

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[1] No notice is necessary where the plaintiff resides out of the county, and has appointed no agent in it. See "Executions,"—§ 75.

Ib. Sec. 2. Jailer to furnish blankets to slave in inclement weather.

§ 20. When any slave shall be committed to jail when the weather is inclement, or shall remain in jail until the weather shall become inclement, it shall be the duty of said jailer to furnish said slave with two good blankets, for which he shall be paid by the owner or owners of said slave, before he or she is released from custody.

2. *Enlargement by Habeas Corpus.*

1807—(27) *Sec.* 1. Proceedings in vacation to obtain enlargement.

§ 21. If any person shall be committed or detained in vacation, and out of term time, for any criminal or supposed criminal matter, unless for treason, or felony punishable with death, the species whereof is plainly and fully set forth in the warrant of commitment, it shall be lawful for such person, or for any one in his behalf, to complain to one of the territorial judges, who may be or reside nearest to the place of his confinement, and to request by a written petition, attested and subscribed by one or more witnesses, that such prisoner may be brought before such judge for the purpose of his examining into the cause of the commitment or detention of such prisoner; and it shall thereupon be the duty of such judge, upon a view of a copy of the warrant of commitment or detainer, or otherwise, upon oath that such copy was denied to be given by the person in whose custody the prisoner is detained, to issue the WRIT OF LIBERTY, (commonly called a writ of *habeas corpus*,) requiring the production of the prisoner, together with the cause of his detention, directed to the person in whose custody the prisoner is detained, and returnable immediately before the said judge at his place of residence, or at such other place as he shall appoint.

Ib. Sec. 2. Duty of sheriff, jailer, &c., on service of the writ.

§ 22. Whenever the said writ shall, by any person, be served upon the officer, sheriff, jailer, keeper, or other person whatsoever, to whom the same shall be directed, by being brought to him, or by being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or one of his under officers or deputies shall, within three days after the service thereof as aforesaid, or at such time as may be expressly directed in the said writ, make return on such writ, and bring or cause to be brought, the body of the prisoner unto the judge before whom the said writ is made returnable, or in case of his absence, unto any other of the territorial judges; and shall then likewise, especially and fully certify the true cause or causes of the commitment and detainer of the said prisoner, and when he was committed. But if the place of the commitment of such prisoner be beyond the distance of twenty miles from the place to which such writ shall be made returnable, and not above one hundred miles, then such writ shall be executed within ten days, and if above the distance of one hundred miles, then within twenty days: *Provided always*, That such officer or other person shall not be obliged to execute such writ until such prisoner or other person in his behalf shall pay or tender the charges of bringing the said prisoner before such judge, at the rate of twelve and a half cents per mile, and until such prisoner shall give his bond to pay the same for carrying him back, if he should be remanded, and that he will not make any escape by the way.

Ib. Sec. 3. Clerk of circuit court, when applied to, required to draw up a petition.

§ 23. When any prisoner as aforesaid, or other person in his behalf, shall personally, or by writing, apply to the clerk of the superior court of the county in which such prisoner may be confined, and shall pay or tender to him fifty cents for so doing, such clerk shall without delay, draw up a petition for and in the name of such prisoner or other person, requesting that he may be brought before the judge to whom the same is addressed, for the purposes hereinbefore expressed, and which shall be subscribed and attested as aforesaid.

Ib. Sec. 4. Duty of the judge.

§ 24. The judge before whom any prisoner shall be so brought, shall within two days discharge the prisoner from imprisonment, taking his or her recognizance, with one or more surety or sureties, in any sum according to his discretion, having regard to the circumstances of the prisoner and the nature of the offence, for his or her appearance at the next court where the offence may be properly cognizable, and then shall certify the said writ, with the return thereof, and the said recognizances, into the court where such appearance is to be made, unless it shall appear to the said judge, that the party so committed, is detained upon legal process, order, or warrant, for such matter or offences, for which by law the prisoner is not bailable; and that the said judge may according to the true intent and meaning of this act, be enabled by investigating the truth of the circumstances of the case, to determine whether according to law the said prisoner ought to be bailed, remanded or discharged, the return may, before or after it is filed, be amended by leave of the said judge, and all suggestions made against it, that thereby material facts may be ascertained.

Ib. Sec. 5. Proceedings in term time.

§ 25. In term time it shall be lawful for any prisoner as aforesaid, in manner aforesaid, to move and obtain his or her *writ of liberty* as aforesaid, out of the circuit court of the county in which he or she may be imprisoned; whereupon proceedings shall be had as aforesaid; and if any such person shall have wilfully neglected by the space of two terms of such court, after his imprisonment, to pay for such writ, it shall not be granted in vacation in pursuance of this act.

1827—(15) *Sec.* 2. Prisoner may be discharged on bail, if not tried.

§ 26. If any person shall be committed for treason or felony, and shall not be tried at or before the next stated term of the court where the offence is properly cognizable, it shall be lawful for the said court, upon the last day of the term, to set at liberty such prisoner on bail, unless it appear on oath or affirmation, that the witnesses for the state, mentioning their names, could not be produced; and if such prisoner shall not be tried at the second stated term after his or her commitment, unless the delay happen on the application or with the assent of the defendant, he or she shall be discharged from imprisonment on bail:[1] *Provided*, That this act shall not be so construed as to prevent a prisoner committed for a capital offence, from being bailed at or before the first stated term under the existing laws.

1807—(27) *Sec.* 7. Exceptions.

§ 27. Nothing in this act shall extend to discharge out of prison, any person guilty, or charged with any offence committed in any other part of the United States, and who, agreeably to the laws of congress, ought to be delivered up to the executive power of such state; nor any person charged with debt or other action, or with process in any civil cause, or suffering imprisonment under lawful judgment founded on a conviction of some criminal offence.

Ib. Sec. 8. Restrictions.

§ 28. And that no person may avoid his trial by obtaining a writ of liberty from some judge residing at a distance from the court where he ought to be tried: *Be it further enacted*, That no person shall be removed out of the county, upon any writ granted in pursuance of this act, within fifteen days next preceding the term of the court where the offence with which he stands charged is properly cognizable, but upon such writ shall be brought before the judge or judges thereof, who shall thereupon do what to justice shall appertain, and after such court, the person detained may have his *writ of liberty*, according to this act.

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[1] But not in capital cases for failure to obtain a jury. See "Criminal Law,"—§ 40.

Ib. Sec. 9. Penalty on a judge, sheriff, jailer, &c., for disobedience to this act.

§ 29. If any judge, being complained to as aforesaid, shall (upon view of the copy of the warrant of commitment or detainer, or upon oath or affirmation that such copy was refused,) refuse or neglect to award any *writ of liberty* by this act required to be granted; or if any officer, sheriff, jailer, keeper, or other person to whom any such writ shall be directed as aforesaid, or any of his under-officers or deputies, shall refuse or neglect to make the returns aforesaid, or to bring the body of the prisoner, according to the command of the said writ, within the respective times aforesaid; or if upon demand by the prisoner or some person in his or her behalf, shall refuse to deliver, or within six hours after demand, shall not deliver to the prisoner or person so demanding, a true copy or copies of the warrant or warrants of commitment and detainer of such prisoner: such judge, officer, sheriff, jailer, keeper, under-officer, deputy, or other person so offending, shall forfeit to the prisoner or party aggrieved, the sum of five hundred dollars in the case of the judge, and the sum of three hundred dollars in the case of a sheriff or other person, to be recovered by the said prisoner or party aggrieved, his or her executors or administrators, against such offender, by action of debt, suit, bill, plaint, or information, in any court of record.

Ib. Sec. 10. Person set at large, not to be recommitted for the same offence.

§ 30. No person who shall be delivered or set at large upon any such writ, shall thereafter at any time, be again committed or imprisoned for the same offence by any person or persons whatsoever, other than by the legal order and process of such court, wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause; and if any other person or persons, shall knowingly, contrary to this act, re-commit or imprison, or knowingly procure or cause to be re-committed or imprisoned for the same offence or supposed offence, any person delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, he or they shall forfeit to the prisoner or party aggrieved, (any pretence of variation in the warrant or warrants of commitment notwithstanding,) the sum of five hundred dollars, to be recovered by the prisoner or party aggrieved in manner aforesaid.

Penalty for recommitting unlawfully.

Ib. Sec. 11. Prisoner not to be removed but by some legal writ.

§ 31. No person committed to any prison, or in custody for any criminal or supposed criminal matter, shall be removed from the said prison or custody, into any other prison, or into the custody of any other person, unless it be by the *writ of liberty*, or some other legal writ, or where the prisoner is delivered to the constable or other inferior officer to be carried to some common jail, or where any person is sent by any judge or justice, having proper authority, to some common work-house, or house of correction, or where the prisoner is removed from one place to another within the same county, in order to his or her trial or discharge in due course of law, or in case of sudden fire, or infection, or other necessity; and if any person or persons shall after such commitment as aforesaid, make out, sign, countersign, and issue any warrant or warrants for such removal, except as before excepted, he or they shall forfeit to the prisoner or party aggrieved, two hundred dollars, to be recovered by the prisoner or party aggrieved in manner aforesaid.

Ib. Sec. 12. This act to apply to cases of illegal confinement, under any pretence.

§ 32. All the provisions hereinbefore made for awarding and granting of *writs of liberty*, and proceeding thereon, in case of commitment or detainer for any criminal or supposed criminal matter, shall in like manner extend to all cases where any person shall be confined or restrained of his or her liberty, under any color or pretence whatsoever; and upon oath or affirmation made by such person, or by any other in his or her behalf, of any actual confinement or restraint, and that such confinement or restraint, to the best of the knowledge and belief of the person so applying, is not by virtue of any commitment or detainer for any criminal or supposed criminal matter, a *writ of liberty*, directed to the person or persons so confining or restraining the party as aforesaid, shall be awarded and granted in the same manner, and under the same penalties, to be recovered from the same persons, as hereinbefore directed; and the court or judge before whom the party so confined or restrained shall be brought, shall after the return made, proceed in the same manner as is hereinbefore prescribed, to examine into the facts relating to the case, and into the cause of such confinement or restraint, and thereupon enter bail, or remand, or discharge the party so brought, as to justice shall appertain.

Ib. Sec. 13. Penalty for disobeying last section.

§ 33. Whensoever any *writ of liberty* shall be served upon the person or persons confining or restraining the party in the manner herein last mentioned, by being brought to such person or persons, or by being left at the place where the party shall be so confined or restrained; the person or persons so confining or restraining such party, shall make return of such writ, and bring or cause to be brought the body of such party, according to the command thereof, within the times limited, and under the provisions hereinbefore prescribed; and every such person refusing or neglecting to make return of such writ, or to bring or cause to be brought the body of the party, according to the command thereof, within the times respectively limited, and under the provisions hereinbefore prescribed, shall be guilty of a contempt of the court, under the authority of which or of the judge thereof, the said writ shall have issued; and shall also forfeit for the first offence, to the party aggrieved, two hundred dollars, and for the second offence four hundred dollars, to be recovered by him or her, or his or her executors or administrators, against the offender, in the manner aforesaid.

Ib. Sec. 14. Suits for breach of this act, limited to two years.

§ 34. No person shall be sued, impleaded, molested, or troubled, for any offence against this act, unless such person be sued or impleaded for the same within two years after the time wherein the said offence shall have been committed, in case the party aggrieved shall not be then in prison or confined or restrained as aforesaid; and if the said party shall be then in prison, or so confined or restrained, then within two years after the decease of the person imprisoned, or so confined or restrained, or his or her delivery out of prison, or from such confinement or restraint.

Ib. Sec. 15. Defendant may plead general issue.

§ 35. The defendant or defendants in any action, suit, bill, plaint, or information, for any offence against this act, may plead the general issue, and give the special matter in evidence.

1812—(10) *Sec.* 5. Judge of county court may award *habeas corpus* in cases not capital.

§ 36. In all cases not capital, the chief justice of the orphans' court where any person is imprisoned, may grant a writ of *habeas corpus*, in the same manner, and under the same regulations as judges of the superior court are by law authorized to do; and such chief justice may discharge, admit to bail, or remand to jail, any prisoner brought before him, in like manner as the judges of the superior court are by law authorized to do.

PRISON-BOUNDS, AND PRISON-BOUND BONDS.

1824—(14). Sec. 2. Judge and commissioners to lay off prison-bounds. Who entitled to the bounds.

§ 1. The judge of the county, together with the commissioners of revenue and roads, shall mark and lay out the bounds and rules of their respective prisons, not exceeding one mile from the jail, which marks and bounds shall be recorded, and renewed or altered from time to time, as occasion may require; and any prisoner imprisoned in a civil action for debt or damages, on original, mesne, or final process, on entering into bond with security as hereinafter mentioned, shall be at liberty to walk within said prison-bounds, and keeping within the same shall be deemed in law a prisoner.

Ib. Sec. 3. Condition of the bond.

§ 2. Any prisoner imprisoned, as mentioned in the second section of this act, may enter into bond with sufficient security to the plaintiff in double the sum of the debt or damages for which he may be imprisoned; which bond the sheriff or jailer may take, with a condition in the following form, to wit: "The condition of the above obligation is such, that if the above bound A. B. a prisoner in the jail of county at the suit of C. D. do, and shall from the date hereof, continue a true prisoner in the custody, guard, and safe keeping of the keeper of said prisoner, or of his steward, deputy, or other officer, or of some of them, within the limits of the prison-bounds of said prison as by law established, until he shall be thence discharged by due course of law, without committing any escape in the mean time, then this obligation to be void, else to remain in full force and virtue"—which bond shall by the officer taking the same be filed in the clerk's office of the court, whence the process issued on which such prisoner was arrested, and if issued by a justice of the peace, it shall be filed in the clerk's office of the county court, and the clerk in either case, shall be bound to give the officer depositing such bond a receipt therefor, which shall be evidence, in case said bond should be lost, of said officer's having taken the same: and should the condition of said bond be broken, the same may be put in suit, and the debt or damages for which said prisoner was imprisoned, together with ten per cent. interest thereon, from the time of commitment, recovered, and costs of suit.

Bond, where filed.

Evidence of bond when lost.

Plaintiff may bring suit.

1809—(4) Sec. 1. On breach of bond, plaintiff may proceed by motion against principal and securities.

[1]§ 3. If any person shall obtain the rule of any prison, upon giving bond and security as the law directs, and shall escape out of the same before he shall have paid the debt, or damages, and costs, according to the condition of said bond; upon due proof thereof, it shall be lawful for the court where such bond is lodged, upon motion of the party for whom such execution issued, to grant judgment and award execution against such person and his securities, executors, or administrators, for the debt or damages, and costs, with six per cent. interest, to be computed from the date of such bond until payment: *Provided*, That if any fact should arise requiring to be tried by a jury, the court shall have power to cause a jury to be empannelled and sworn to try the same; and if the regular jury attending such court shall be discharged, the court shall cause a jury of qualified by-standers to be summoned for the trial thereof: *Provided always*, That the obligors, their executors, or administrators, or such of them as it is intended to have judgment entered up against, shall have notice in writing, at least ten days previously to the time of making such motion.

Jury may be empannelled to try facts.

Defendant to have notice of motion.

Ib. Sec. 2. On execution, rules to be denied.

§ 4. No person or persons who shall be committed on any such execution, shall be allowed the rules of any prison, but shall be kept in safe custody in prison, until the whole debt or damages, with costs and interest, shall be fully paid, or until they shall be otherwise discharged by law.[1]

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[1] This section is retained as giving a remedy by motion, not provided for by the act of 1824.

PUBLIC HEALTH.

Contagious Diseases.

1807—(29) Penalty for introducing or spreading small-pox.

§ 1. If any person or persons whatever, shall wilfully and designedly presume to import or bring into the territory from any country or place whatever, the small-pox, or any variolous or infectious matter of the said disease, for the purpose, or with a design to spread the same, by inoculation or otherwise; or shall inoculate, or procure inoculation for the small-pox, after such disease may have been introduced, except under such regulations and restrictions as shall hereinafter be named, he or she so offending, shall forfeit and pay a sum not exceeding two thousand dollars, and be imprisoned a term not exceeding twelve months, for every offence so committed.

Governor to take measures to prevent the spreading of contagious disorders.

§ 2. The governor is hereby authorized, on knowing from his own observation, or by information being given to him by any physician, that the plague, yellow-fever, small-pox, or other contagious disorder, has been introduced into a neighboring country, or found admittance within this territory; or on board any boat or vessel, at or near the shores of the same; to take such measures to prevent a communication of the infection, and for the aid and comfort of the sick when within the said territory, as he shall deem meet. And all expenses incurred in the prosecution of this humane intention, shall, by warrant of the governor, be paid out of the moneys of the territorial treasury, not otherwise appropriated: but in all cases, the said expenses shall be reimbursed by the person or persons for whom such provisions shall have been made; they being of ability to pay the same.

Expenses, how paid.

Under what restrictions persons may be inoculated.

§ 3. Whereas in certain cases inoculation for the small-pox may not only be a prudent, but a necessary measure, for securing those who are or may be unavoidably exposed to the danger of taking the disease in the natural way; and for this reason it is judged expedient to tolerate the same, under certain reasonable regulations and restrictions: *It is provided, therefore,* That if any person or persons who may wish to be inoculated, shall petition the governor to that effect, he may appoint him or them a place within this territory, that will not endanger the health of the citizens of the same, where the petitioner or petitioners shall resort for the purpose of being inoculated. And should any master or mistress of a family think him or herself, his or her family in danger of catching the small-pox in the natural way, such person shall give like notice to the governor; and if he shall deem it prudent and proper, and not dangerous to the health and safety of the people of this territory, for such person or family to be inoculated, he may admit of the same or otherwise as to him shall seem expedient.

Persons having had small-pox, to obtain certificate before going out.

§ 4. No patient in the small-pox shall, until after having obtained a certificate from the attending physician, or other person qualified to give such certificate of his, her, or their recovery, and of their being perfectly clean in their persons and clothes, remove from the place where he, she or they shall have had the small-pox, to go abroad in the company of other people, who have not had the disease; or go into any public road or highway where travellers usually pass, without retiring out of the same, or giving notice on the approach of any passenger, under the penalty of forfeiting and paying for every such offence, the sum of one hundred dollars; and if a servant or slave, to be paid by his or her master or mistress.

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[1] An act passed Dec. 19, 1815, provides "that no person committed to jail by sentence of a court, judge, or justice, shall be allowed the liberty of the prison-bounds."

§ 5. All moneys forfeited under this act, may be sued for in any court of record within this territory, having jurisdiction of the same: and the moneys so recovered shall be appropriated, the one half to the informer, and the other half paid into the treasury of this territory.

Forfeitures, how recovered and appropriated.

UNWHOLESOME PROVISIONS.

1815—(14) *Sec.* 1. Penalty for selling unwholesome provisions and liquors.

§ 6. If any butcher, baker, brewer, distiller, tavern-keeper, retailer of wines or spirituous liquors, or other person or persons, shall sell, offer, or expose to sale, or suffer or permit their servant or servants, or other person for him, her, or them, to sell, offer, or expose to sale, any tainted, putrid, or unwholesome fish or flesh, or the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, for the purpose of being sold or offered for sale; or any tainted, putrid, or unwholesome bread, or other cooked or raw food of any kind whatever; or any adulterated or unwholesome wines or spirituous liquors; such person shall, for every such offence, on conviction thereof before any justice of the peace within the county or corporation where the offence was committed, on the evidence of any two credible witnesses, forfeit and pay a fine of five dollars, with costs, one half to the prosecutor, and the other half to the overseer of the poor of the district where the offence was committed, for the use of the poor thereof.

Ib. Sec. 2. Penalty on bakers for selling bread not marked with their names.

§ 7. It shall be unlawful for any baker, his or their servant or servants, or other person or persons, to sell, offer, or expose to sale, any bread without having the baker's surname, and the initials of his Christian name, legibly marked on every loaf, cracker, cake, piece, or division of any kind of bread, offered or exposed to sale by whatever name the same may be called; and every person so offending, shall, for every such offence, forfeit and pay five dollars with costs, recoverable before any justice of the peace, of the county or corporation where the same was offered for sale, on the evidence of one credible witness; one half of the fine to the overseer of the poor for the district where the offence was committed, and the other half to the prosecutor; and shall, moreover, forfeit all such bread, so offered for sale, for the use of said poor.

Ib. Sec. 3. Bakers to have their marks recorded.

Penalty for counterfeiting baker's mark.

§ 8. Any person or persons, who shall follow the business of a baker, shall have the initials of his given name, and his surname at full length, as is intended and directed by the second section of this act, put on record in the office of the register of the orphans' court of his proper county, or in the office of the clerk of the corporation where he may reside; and any person or persons who shall counterfeit or mark the same, shall for every such offence forfeit and pay twenty dollars, on conviction, recoverable with costs before any justice of the peace of the proper county, or corporation, for the use of the poor where the offence was committed.—[See "Tavern-keepers and Retailers,"—§ 9.]

PUBLIC OFFICERS.

Con. Ala. Art. 6, *Sec.* 12. Who disqualified.

§ 1. No member of congress, nor any person holding any office of profit or trust under the United States, (the office of post-master excepted,) or either of them, or any foreign power, shall hold or exercise any office of profit under this state.

1829—(14) *Sec.* 4. Public officers may be indicted for malpractices, when the law provides no other remedy.

§ 2. In all cases when no mode is prescribed by law for the punishment of any officer for neglect of duty, or other improper conduct, or for misconduct in office, the officer so offending may be proceeded against by indictment, and on conviction shall pay such fine as shall be assessed by the jury trying the same.

Note.—For the manner in which public officers may be surrendered by their securities,—See "Securities."

RECORDS.

1803—(3) *Sec.* 23. Spanish records, how preserved, &c.

§ 1. Whereas, no legal provision hath been had for the safe keeping, preserving and certifying the records and papers of the office of clerks and recorders, which were kept during the administration of the Spanish government: *Be it therefore enacted*, that the governor shall immediately after the passing of this act, appoint and commission some person properly qualified, to keep, translate, and preserve the same; and the said officer so appointed, is hereby authorized to give copies of all and singular the said papers and records, whenever thereunto required, and certify the same under his hand and official seal; for which he shall receive a fee of twenty-five cents for every hundred words; and the person so appointed, before he enters upon the exercise of his office, shall give bond and security, payable to the governor, and his successors in office, in the penal sum of five thousand dollars; conditioned for the safe keeping of the said papers and records, and the faithful discharge of his office; which bond shall be lodged in the hands of the secretary of this territory; and may be put in suit by the party or parties injured, in his or their own names; and shall not become void upon the first recovery, but may from time to time, be put in suit, by action of debt, until the whole penalty be recovered.

1833—(10) *Sec.* 1. Governor to appoint translator.

§ 2. It shall be the duty of the governor, immediately after the passage of this act, to appoint some competent person, whose duty it shall be to translate and to transcribe all the British, French, and Spanish records, within the limits of this state, and to record the same in a well bound book, to which shall be annexed, an alphabetical index; and to place one copy of the same in the office of the clerk of the county court of Mobile, one copy in the land office at St. Stephens, and one copy in the office of the secretary of state.

Ib. Sec. 2. Translator to give bond.

§ 3. The person so employed, before entering upon the duties hereby assigned him, shall enter into such penal bond as may be required of him by the governor; and shall take and subscribe the following oath: "I, A. B., do solemnly swear, (or affirm as the case may be,) that I will faithfully transcribe and translate, and a true copy make of all the British, French, and Spanish records within the limits of this state, that may come to my knowledge, to the best of my skill and ability: So help me God."

§ 4. It shall be lawful for the governor of this state, to pay the person so employed, out of the contingent fund, such compensation as may be considered reasonable and just.

Ib. Sec. 3. Compensation.

§ 5. The records thus transcribed and translated, shall be received as evidence in any court of justice within this state.

Ib. Sec. 4. Records translated to be received as evidence.

NOTE.—The records of state shall be kept by the secretary of state, at the seat of government,—See "Secretary of State,"—§ 2. The secretary of state shall preserve the records of the general assembly, and all papers relating to unfinished business, p. 217, 218. The records of the courts shall be read each day during court, and on the last day, be signed by the judge, p. 245. Clerks required to make complete record within three months after the decision of a cause, p. 83. Rolls in chancery to be kept separate, p. 286. Records not to be removed from the county unless in danger, p. 84; nor on subpœna, when a transcript may be given in evidence, p. 93. In what time conveyances, deeds of trust, &c. shall be recorded, and the effect thereof, p. 91—2, 207—8. Certified copy, evidence, when original is lost, p. 93. Notaries' registers on their death or resignation, shall be delivered over to the clerks of the county courts, p. 326. Records of marriages, p. 305—6; of officers' bonds, p. 101; of official oaths, p. 331. Records of other states, how authenticated,—See "Appendix," No. 2.

RELIGION.

§ 1. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

Con. Ala. Art. 1. *Sec.* 3. Rights of conscience,

§ 2. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

Ib. Sec. 4. not to be interfered with.

§ 3. No person shall be hurt, molested, or restrained in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

Ib. Sec. 5. No person to be molested.

§ 4. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished, or enlarged, on account of his religious principles.

Ib. Sec. 6. Civil rights not affected by religious belief.

§ 5. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship; and no religious test shall ever be required as a qualification to any office or public trust under this state.

Ib. Sec. 7. No established religion, or religious test.

§ 6. It shall be lawful for all persons who are, or hereafter may be, members of any religious denomination, to associate themselves into societies or churches, assume such name as they may think proper, and to adopt articles for their government, not inconsistent with the laws and constitution of this state; any of which churches may appoint deacons, class-leaders, elders, or trustees, at the pleasure of such church to distinguish them, and may enter of record in their church books, such articles of government, and the names of such leaders or trustees; which church may cause [a]a copy of such articles of government *to be deposited, and* the names of their leaders or trustees, to be recorded, in the office of the clerk of the county court; whereupon, such church is declared to be a body corporate, and shall be capable of purchasing, receiving, and holding, by such leaders or trustees, lands not exceeding in quantity fifteen acres, together with the appur-

1819—(17) *Sec.* 1. Persons professing religion may form themselves into churches, adopt by-laws, and appoint officers.

[a 1833—(3) *Sec.* 1.] May become a body corporate, by having their articles of government recorded.

May purchase real estate, not exceeding fifteen acres,

tenances thereto belonging, which church shall have, enjoy, and enforce all the rights, privileges, and powers of any other body corporate, in and over the lands and tenements aforesaid, for the harmonious and public worship of Almighty God: which lands and tenements shall descend in perpetuity to the use of such church and their religious successors, for the purpose aforesaid: *Provided always*, That when any church aforesaid shall be disposed to change the site for their meeting-house, such church by their trustees, shall have power to sell and convey the same, and to purchase and receive titles for lands elsewhere, not exceeding fifteen acres.

and dispose of the same, in certain cases.

1831—(14) *Sec.* 1. Churches and church-lots exempt from taxes.

§ 7. The several churches in the state of Alabama dedicated to religious worship, and the lots on which they are erected, not exceeding two acres of land to each, shall be exempt from any levy of taxation, for state, county, or corporation purposes: *Provided*, The lands so exempted shall belong to, and be the property of, citizens of the United States, and shall be used for the purposes of religious worship and no other, except for the use of schools, and as burying grounds attached to said churches.

1822—(2) Preamble.

Whereas, by the constitution of the state of Alabama, the citizens thereof have the right to worship God according to the dictates of their own consciences; and whereas the people in assembling themselves for the purposes of religious devotion, are often disturbed by the disorderly conduct of wicked persons, for remedy whereof:

Sec. 1. Persons disturbing religious congregations, may be fined.

§ 8. *Be it enacted, &c.* That if any person or persons hereafter shall be found guilty of wilfully raising a riot, getting drunk, swearing, or any other act by which the congregation shall be interrupted, during the continuance of any meeting for the purposes aforesaid, all such person or persons, their aiders and abettors, shall on due proof thereof, forfeit and pay the sum of twenty dollars, besides costs of suit; to be recovered before any judge or justice having competent jurisdiction: one half to go to the informer, and the other half to the county where such fine may be recovered.

Ib. Sec. 2. Persons prohibited selling intoxicating liquors within two miles of any religious meeting.

§ 9. And whereas many individuals have been in the habit of retailing spirituous liquors at or near camp-meetings, thereby causing drunkenness and disorder, *Be it further enacted*, That if any person whatever shall hereafter retail spirituous liquors, or any kind of drink that is calculated to produce drunkenness, within two miles of any camp-meeting, quarterly-meeting, association, or any other religious meeting, during the continuance of any such meeting, such person or persons so offending, their agents or servants, on due proof thereof, shall for every such offence, forfeit and pay the sum of forty dollars, besides costs of suit, to be recovered before any judge or justice having competent jurisdiction: one half to go to the informer, and the other half to the county where such fine may be recovered: *Provided nevertheless*, That this law shall not operate upon such persons as actually reside within two miles of such meetings, and who have obtained and hold a license for retailing.

Proviso.

1826—(23) *Sec.* 1. Persons not to sell cider, beer, &c.

§ 10. Hereafter it shall not be lawful for any person or persons to sell, at or near any camp-meeting, association, or any other religious meeting, during the continuance of such meeting, any cider or beer, or any other thing whereby the said meeting may be disturbed; and any person or persons violating this act, shall be liable to the penalties prescribed by the act to which this is an amendment, and to be recovered in the manner directed by the said act.[a]

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[a] *The preceding act.*

RENT.

§ 1. It shall be lawful for any person or persons, to whom any rent may be due, or the executor or administrator of such person, when the demise is not by deed, or if by deed, not specifying the rent to be paid, to recover a reasonable satisfaction for the tenements occupied by the defendant in an action on the case, for the use and occupancy of what was held and enjoyed; and if on evidence on the trial of such action, any parol demise reserving certain rent, or a demise by deed, but no rent therein agreed on, in either case, the plaintiff in such action shall not be nonsuited, but shall recover a reasonable satisfaction for the tenements occupied.

1812—(3) Recovery of rent, on parol demise, or deed not specifying the rent.

§ 2. The common law method of distress for rent, shall be, and the same is hereby abolished.

Distress for rent abolished.

§ 3. The crop grown on any rented land in this state, shall not be liable to be taken by virtue of any execution, or removed off the premises of any such rented land, unless the party so taking the same shall, before the removal of the crop from such premises, pay, or tender to the landlord or lessor thereof, or his agent, all money due for the rent of the said premises at the time of taking such crop in execution: *Provided nevertheless*, That such rent or arrears do not amount to more than one year's rent, and if more be due, then the party suing out such execution, paying or tendering to such landlord or his agent, one year's rent, may proceed to execute his judgment, and the sheriff or officer levying the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for the rent, as the execution money.

1821—(22) *Sec.* 1. Crop raised on rented land not to be executed or removed, until rent is paid. Lien for one year only.

Note.—The landlord has also a lien for one year's rent, in priority of the claim created by an execution, upon all goods and chattels of the lessee or tenant, upon the leased premises,—See "Executions,—§ 40.

ROADS, BRIDGES, AND FERRIES.

To obviate, in some measure, the unavoidable defects of arrangement in this title, the following partial synopsis is given:—County Bridges,—§ 24. Toll Bridges,—§ 7, 28, 29, 30. Ferries,—§ 3, 26, 27, 29, 30, 48. Private Ways,—§ 1, 2, 49. Turnpike Roads,—§ 4, 50, 51.

§ 1. In all cases where no part of the tract of land owned by any individual, touches a public highway, the county court may in their discretion, on the application of one or more persons so situated, grant a private way, not exceeding fifteen feet in width, leading from the most convenient part of such tract of land to the nearest public highway; such order to be made in all cases, on the report of a jury, of the same number, and under the same rules and restrictions, as are required by law in the case of public highways.

1818—(11) Private ways may be granted in certain cases. Under what restrictions.

§ 2. Whenever a private way shall be granted in conformity with the provisions of this act, it shall be the duty of the person or persons, on whose application the same may be granted, to open and keep the same in repair, at his or their own expense, until regularly discontinued: *Provided*, That no such person or persons shall be thereby exempted from any duty required by law on public highways.

To be opened and kept in repair by person to whom granted.

§ 3. The county courts of the several counties are hereby authorized to impose and inflict penalties, not exceeding twenty dollars for each of-

1820—(9) *Sec.* 1.

Court may inflict penalties for violating the privileges of public ferries.

fence, on any person or persons who may violate or contravene the privilege granted by their said courts respectively, to any person or persons to keep a public ferry or ferries, to be recovered before a justice of the peace, or any court having competent jurisdiction of the same; which penalty shall inure to the use of the person or persons suing for the same: *Provided always*, That nothing in this act shall be so construed, as to exclude any person or persons from the right of carrying themselves, or other persons, or anything belonging to them, in their own boats, free of ferriage: *And provided also*, That if any delay be created by the ferryman aforesaid, no penalty shall be recovered from any person whatsoever, by crossing said ferry.

Proviso.

1822—(26) *Sec.* 1. Turnpike roads.

§ 4. The commissioners of the several turnpike roads in this state shall not report any turnpike road in order, until the proprietors of said road or roads shall have complied with the provisions of the acts authorizing said turnpike road or roads.

1823—(36) *Sec.* 1. Commissioners not to be apportioners or overseers.

§ 5. Commissioners of revenue and roads shall not be apportioners of hands to work on roads, nor shall they be appointed overseers of public roads:—nor shall overseers be appointed to apportion hands to work on the public roads.

Ib. Sec. 2. Vacancies for overseers filled by judge of county court.

§ 6. In case of the death, removal, or absence for the space of two months at one time, of any apportioner of any public road appointed in conformity with the present road law, the judge of the county court shall have power to fill such vacancy until the meeting of the commissioners of roads and revenue, who shali be authorized to make such appointment as is provided by the laws now in force.

1824—(27) *Sec.* 5. Restrictions on toll bridges.

§ 7. No license shall be granted by any county court to any person to erect a toll-bridge within three miles by water of any toll-bridge already established on the same water-course.

Ib. Sec. 6. Officers of incorporated towns, to appoint overseers of streets.

§ 8. The corporate officers in all the incorporated towns in this state, shall appoint overseers on the roads and streets in said towns; and when the hands and overseers are exempt from working on the public roads beyond the limits of said towns, it shall be the duty of the grand juries of the counties in which said towns are situated, to present all overseers of streets in said towns for failing to keep the principal roads and streets in the incorporated towns in good repair; and the overseers in said towns shall be prosecuted in the same manner, and be subject to the same penalties as overseers of public roads in this state; and the books and records of said incorporated towns shall be legal evidence of the appointment of the overseers, and the establishment of streets and alleys in said towns.

Ib. Sec. 7. When hands are warned to work on two roads.

§ 9. When hands are warned to attend and open any new road, and the overseer of any road to whom said hands are apportioned, shall warn the hands to work on the same day on the road to which the hands are apportioned, it shall be the duty of the hands to work on the road on which they are first warned: *Provided*, That nothing in this act contained shall be so construed as to apply to or in any manner affect any corporate town in this state for which there are special legislative enactments, in relation to the streets thereof.

Proviso.

Ib. Sec. 11. Apportioners' exemptions and liabilities.

§ 10. All apportioners shall be exempted from working on roads for the term of twelve months; and on failure of any apportioner to perform the duties required of him, he shall be liable to a penalty of twenty dollars.

1827—(16) *Sec.* 1. Roads now established, declared public.

§ 11. All public roads and highways that have been laid out or established by virtue of any act of the general assembly, or by virtue of any order of court, except such as have been discontinued, are hereby declared to be public roads; and the county courts of the several counties shall have full power to order the laying out of public roads where necessary, and to discontinue such county roads as now are, or shall hereafter be made, as shall be found useless, and to alter roads[1] so as to make them more useful, as often as occasion may require: *Provided*, That the said courts shall in no instance grant an order on any petition for any new public road, or to discontinue an original one, unless the person or persons petitioning for the same, shall have given at least thirty days' notice, by advertisement, of his or their intended application, stuck up at the court-house, and three other public places in the county, in which the road is intended to be made, or discontinued.

Roads may be laid out or discontinued.

Thirty days' notice of application for new road to be given.

§ 12. All roads hereafter ordered to be made, shall be laid out by a jury of householders, to be appointed by the county court of roads and revenue, and said jury shall consist of seven persons, a majority of whom shall be instructed by the court to lay out the road so ordered, to the greatest advantage of the inhabitants, and as little as may be to the prejudice of enclosures; and the said jury shall take the following oath, to wit:—"I, , do solemnly swear, that I will lay out the road now directed to be laid out, by the order to us directed from the county court of roads and revenue, to the greatest advantage to the public, and with as little prejudice to enclosures as may be, without favor or affection, malice or hatred, and to the best of my skill and knowledge: So help me God."

Ib. Sec. 2. Roads to be laid out by a jury of householders.

Oath of jury.

§ 13. It shall be the duty of the county court of roads and revenue, of each county in this state, to divide all the roads passing through their respective counties into different grades; and said roads shall be kept open and repaired in the following manner: those of the first grade shall be cleared of all trees, at least thirty feet wide, with all stumps cut within six inches of the surface, all causeways at least fifteen feet wide. Second grade, to be not less than twenty feet wide, with all stumps cut within six inches of the surface, all causeways at least twelve feet wide. Third grade, to be not less than fifteen feet wide, with all stumps cut within six inches of the surface, all causeways at least ten feet wide; [a]*Provided*, That lanes through which public roads may pass, shall be at least thirty feet wide. And in all cases where a new road is established, the owner or owners of the land over which such road passes, may, at the next term of the county court, apply to said court for damages for the injury which he, she, or they may have sustained by the establishment of such road; and it shall be the duty of the court to cause a jury to be empannelled to inquire of such damages, in which inquiry the jury shall take into consideration the advantages and disadvantages accruing to such applicant by the establishment of such road, and give their verdict accordingly; and the damages, if any assessed, shall be paid out of the county treasury. (1)

Ib. Sec. 3. County court to lay off roads into grades.

1st grade, how wide, &c.

2d grade.

3d grade.

[a 1821—(10) *Sec.* 2.]

Lanes.

Injury to private property in opening new road, to be assessed by a jury, and the damages paid by the county.

§ 14. The county courts and commissioners of roads and revenue are hereby required to divide the public roads in their respective counties into districts or precincts, and to appoint annually, at their first term in each year, one overseer for each district or precinct; and should they fail to make such appointment, then the same may be made at any time thereafter;[b] and it shall be the duty of the clerk of said court, within fifteen days after the appointment so made, to deliver a copy of the order to the sheriff of the county, informing said overseer of his appointment, the precinct of the public road to which

Ib. Sec. 4. Precincts and overseers.

[b 1826—(18) *Sec.* 1.] Overseer, how notified of his appointment.

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[1] They may also change the route of state roads, under certain restrictions,—See the last section of this title.

(1) An appeal will not lie, until final order confirming the report of the jury. Smith *v.* Commissioners of Roads, &c. 1 *Stewt. Rep.* 183.

Overseer to deliver a copy of the notice to the apportioners.

Apportioners failing to apportion, the last apportionment to continue in force.

Persons moving into the bounds after apportionment, liable to work.

he is appointed, and the grade of said precinct; and the sheriff shall, within ten days after the receipt of such copy, deliver a counterpart thereof to the overseer, and make his return thereof on said copy within ten days after the delivery of such counterpart, to the county court clerk's office. And it shall be the duty of such overseer, on receiving such counterpart as aforesaid, to deliver a copy thereof to some one of the apportioners in his district or precinct; and should the bounds of another captain's company approach so near to his district or precinct that, from the distance, hands may be liable to work on his district or precinct, in that case he shall deliver a copy, similar to the copy aforesaid, to one of the apportioners in said captain's company: *Provided*, That when the apportioners shall fail to apportion the hands to work on any public road under their jurisdiction, the last apportionment of hands made and returned, shall be obligatory, and remain in full force and effect until altered; and all hands subject to work on the road to which the same have been apportioned heretofore, and still living within said bounds, and all persons moving within the bounds of the hands apportioned as aforesaid, liable to work on any such road, shall be considered as belonging to said road, and liable in the same manner as though they had been apportioned to work on said road, and for neglect, shall be proceeded against in the same manner as other defaulters of public roads.

Ib. Sec. 5.
Three apportioners to be appointed in each captain's beat.

[a 1823—(35) *Sec.* 5.]
Oath.

Penalty for not serving.

List of lands to be returned to the apportioners.

Penalty of six dollars a hand, for failing.

Fine recovered in circuit court on motion of solicitor.

Apportioner's certificate, evidence.

§ 15. The county court of roads and revenue are required, at the time they appoint overseers of roads, to nominate and appoint three freeholders, or householders, in each captain's beat, (a majority of whom may act,) within their respective counties, who shall apportion the hands liable by law to work on public roads, to each overseer, agreeably to the grade of, and the necessary labour required on, his precinct or district: [a]and such apportioners shall take an oath before entering on the duties of their apportionment, to apportion all such hands with impartiality; and any person refusing to act as an apportioner when appointed, without good cause shown, shall be fined in a sum not exceeding twenty dollars. And it shall be the duty of every person, on application of any one of said apportioners within the bounds of said company, within fifteen days after the term of the county court at which overseers of public roads are required to be appointed, to give in a list of all the hands he may at that time have in his possession, himself included, liable to work on public roads; and if any person shall neglect, for the space of ten days thereafter, to deliver a list thus required, to some one of the apportioners, such person so refusing or neglecting, shall forfeit and pay the sum of six dollars for each hand liable to work, not given in or returned: which fines shall be recovered by judgment on motion in the circuit court, without the interposition of a jury, unless the same shall be demanded by the defendant, which motion shall be made by the solicitor of the circuit in which such defaulter resides: *Provided, however*, That in all cases it shall be the duty of the solicitor to give to such defaulter three days' notice; and in all cases of such failure, the certificate of such apportioner or apportioners shall be deemed sufficient evidence.

Ib. Sec. 6.
Who liable to work on roads.

Who exempt.

§ 16. All free white male persons, between eighteen and forty-five years of age, and all male slaves and other persons of color over sixteen and under fifty years of age, shall be liable, and it is hereby made their duty, to work on, clear out, and repair the public roads of this state, under such provisions and regulations as are hereinafter made: *Provided nevertheless*, That no licensed minister of the Gospel, instructer of public and private schools, and all students of common schools or public institutions, keepers of grist-mills that grind for toll, public ferrymen, commissioners of revenue and roads, the directors of the Bank of the State of Alabama, judges of the county court and justices of the peace, shall be liable to work on public roads.

Ib. Sec. 7.
Clerk of county court to post up list of overseers.
Penalty.

§ 17. The clerks of the several county courts of this state, shall put up in their respective court-houses, on the first day of each circuit court, a list of the names and precincts of all the overseers of the roads in the county; and on neglect, shall forfeit and pay for each failure ten dollars, to be recovered on motion made by the solicitor to the circuit court, as prescribed in the fifth section of this act.

Ib. Sec. 8.
Penalty for refusing to serve as overseer.
Overseer not notifying clerk of nonacceptance, presumed to have accepted.
On non-acceptance, vacancy to be filled by two justices of the peace.
Penalties under this section.

§ 18. Every person refusing to serve as an overseer on any road, agreeably to the order of the court of the county in which he resides, without a reasonable excuse, to be judged of by the circuit court, shall forfeit and pay a sum not exceeding forty dollars; and it shall be the duty of each overseer of any public road, to notify the clerk of his county court of his nonacceptance within ten days after his being notified of his appointment, and on failure to do so, it shall be considered an acceptance of his appointment; and it shall moreover be the duty of the clerk to insert on the commission, the duties required of overseers, in respect to their nonacceptance; and if any overseer shall notify the clerk of his refusal to act, the clerk shall forthwith report the same to two justices of the peace of the neighborhood where such overseer resided, who are authorized and required to appoint a successor to serve for the residue of the time; and such new overseer, so appointed, shall be subject to the same penalties and forfeitures as the overseer appointed by the county court, and the penalty for refusing to accept, shall be recovered by judgment in the circuit court, on motion of the solicitor, as prescribed in the fifth section of this act; and the certificate of the clerk of the county court, in all cases of forfeiture incurred under this section of this act, shall be deemed sufficient evidence: *Provided nevertheless*, That no person shall be compelled to serve as an overseer, more than one in every three succeeding years.

Ib. Sec. 9.
Overseer to give hands three days' notice to work.
Penalty for refusing to work, &c.
Excuses to be heard.
Overseer to return list of defaulters to justice, who shall collect the fines.
How appropriated.
Penalty for false return.

§ 19. It shall be the duty of the overseer of any road to give three days' previous notice, by summons in person, or in writing left at their respective places of abode, by himself or some other person appointed by him, to all free male persons, as well as to the owner, overseer, or overseers of slaves, liable to work on roads as appointed to him, to meet at such times and places as he may appoint, and to bring with them such tools to work with on the roads as he may direct; and if any free person so summoned shall fail to attend, or send a substitute to work in his place, or when attending shall neglect or fail to do and perform his or their duty therein, he or they shall forfeit and pay a fine of one dollar per day each, for every such failure, nonattendance, or refusal; and if any slave or slaves fail to attend, agreeably to the summons of the overseer of the road to the owner or overseer of such slave or slaves, the owner, owners, or overseers, (as the case may be,) shall forfeit and pay one dollar per day for each slave that shall fail to attend as aforesaid: *Provided*, That all reasonable excuses shall be heard and allowed; and it shall be the duty of the overseer to return on oath, a list of all hands apportioned to him within his district or precinct, who may not have worked when by him called out, to some justice of the peace in said precinct, whose duty it shall be, within ten days thereafter, to issue his warrant, and collect said fine as other debts are now collected by law; and the certificate of said overseer shall be deemed sufficient evidence; and the fines so collected shall be paid over to the overseer of said road, to be appropriated in hiring hands to work on said road: *Provided nevertheless*, That if any overseer return an incorrect list to said justice of the peace, any person or

Overseer not liable for costs.

persons injured thereby may recover the amount of any damages sustained by him or them, by an action of debt, before any justice of the peace or court having jurisdiction thereof: *Provided*, That overseers shall in no case pay cost in case the defaulter should be exonerated from fine.

Ib. Sec. 10. **Overseers to measure road, and set up mile-posts.** **Index boards.** **Penalty for failure.**

§ 20. It shall be the duty of all overseers of public roads to measure such parts of roads as fall within their respective precincts or districts, in continuation, and to set up posts at the end of each mile, leading from the court-house, or some noted place or town, and to mark on the said posts, in large legible figures, the distance in miles to said court-house, or other noted place, and when a post so erected shall be removed by any means whatever, the overseer of the road shall cause the same to be replaced by another, to be put in the same place, marked as on the one removed; it shall also be the duty of overseers of roads to affix at the forks of all public roads, in their respective districts or precincts, index-boards, pointing towards, with directions to, the most noted places to which they lead; and on failure to put mile-posts marked as aforesaid, or index-boards as aforesaid, within sixty days after their appointment, the overseer of such road, for every such failure or neglect, shall forfeit and pay the sum of five dollars, to be recovered by judgment of the circuit court, on motion of the solicitor as prescribed in the fifth section of this act.

Ib. Sec. 11. **Overseers may call out hands at any time.** **Restrictions.**

§ 21. The overseers of the roads shall have power to call out all persons apportioned to work on their respective roads within their precincts or districts, at any time and at all times when they may think proper: *Provided*, That no new road shall be cut out between the first day of March and the tenth day of July, in any year: *And provided also*, That no person shall be compelled to work on more roads than one, in any one year, nor more than ten days on any road:[a] *Provided*, That no new road shall be opened through an enclosure whilst there is a crop growing in the same.

[a] *See* § 46.

Ib. Sec. 12. **Penalty for changing, or obstructing road.** **Overseer to give notice to solicitor.** **Roads may be straightened through enclosures, &c.**

§ 22. If any person or persons whatsoever, shall alter or change any public road, unless it be by order of the county court of the county, founded upon the report of a jury, appointed and sworn as in the case of laying out new roads, they shall on conviction of every such offence, be fined in a sum not less than twenty dollars for each month the road is turned out of the old course, and the old road shall in no case be shut up, until the overseer shall certify to the court that the newly opened road is in good and sufficient order; and if any person or persons shall erect or cause to be erected across any public road any fence, bar, or impediment, or shall fell a tree or brush on the same, and shall not remove such impediment within twenty-four hours thereafter, he or they shall forfeit and pay five dollars for every such offence, and shall moreover be liable to pay five dollars for every twenty-four hours after the first day such impediment remains in said road; and it shall be the duty of the overseer of the road, turned as aforesaid, or on which such impediment may be, to lodge information with the solicitor of the county in which the same may be, and the circuit court shall enter up judgment against the offender or offenders, as prescribed in the fifth section of this act, for the amount of the penalty incurred; and the oath of the overseer of the precinct or district, shall in all cases be deemed sufficient evidence: *Provided*, That nothing herein contained shall subject the party removing said road to damages where the same is done to straighten said road through enclosures, or where the removal shall not render the said road more inconvenient to the public.

§ 23. When to the overseer of a road it may appear expedient to make or repair causeways on the same, said overseer shall make them according to the grade of said road; and the earth necessary to cover said causeway, shall be taken from either side of said causeway, at the discretion of said overseer, so as to make a drain on either or both sides.

Ib. Sec. 13.
Causeways to be made according to the grade of the road.

§ 24. When a bridge shall be necessary over any place where the overseer with his assistants cannot conveniently make it, the court of the county wherein such place may be, is empowered and required to contract and agree for the building, keeping, and repairing thereof, and to lay the charge on their county by tax or otherwise; and where bridges shall be necessary over any such creek or river, which divides one county from another, the court of each county shall join in the agreement for building, keeping, and repairing the same, and the charge thereof shall be borne and defrayed by both counties, in proportion to the amount of taxables in each; and every contract, agreement, and order by the several county courts in this state, entered into or made, for or concerning the building, keeping, or repairing of bridges or causeways, in such manner as to them shall seem most proper, shall be good against them, and their successors in office.

Ib. Sec. 14.
County court may contract for bridges.
Bridges over streams dividing counties, to be erected at their joint expense.
Contracts binding on the county.

§ 25. Every overseer who shall fail or neglect to keep the roads, bridges, and causeways, within his district or precinct, clear and in good repair, or permit them to remain uncleared or out of repair, for fifteen days at any one time, unless hindered by high water, bad weather, or other sufficient cause, to be adjudged of by the court having jurisdiction of the same, shall forfeit and pay for every such offence, a fine not exceeding twenty dollars, at the discretion of the court; said fine to be recovered by judgment of the circuit court, on motion made by the solicitor, as prescribed in the fifth section of this act: *Provided nevertheless*, That payment of this penalty shall not prevent any persons who may have sustained damage by the road being out of order, from recovering the amount of such damage from such overseer.

Ib. Sec. 15.
Penalty on overseer for not keeping road in repair.
Private damages allowed.

§ 26. The county courts shall have power to establish ferries, and order them under such regulations as is hereinafter directed:—before any person shall open or establish a public ferry in this state, he shall apply to the county court of the county in which such ferry may be, and the court, for good cause shown by the party applying, may grant a license to establish a ferry, and shall affix the rate of toll or ferriage on all persons, horses, cattle, or carriages, &c. that may pass the same, and shall moreover require from the person or persons so applying for license, to give bond with good and sufficient security in the sum of one thousand dollars, payable to the judge of the county court, and his successors in office, of the county in which the ferry may be, conditioned that the person or persons to whom said license may be granted, will constantly provide and keep a good and sufficient boat or boats, also keep the banks on each side of the watercourse in good repair, and that said ferry shall be well attended for travellers or other persons to carry or pass their horses, carriages, or effects, over such river or water-course.

Ib. Sec. 16.
Ferries, how established.
Persons obtaining license for ferries to give bond.

§ 27. Where land is owned by the same person on both sides of a river, over which it may be necessary to establish a ferry, such person shall have the ferry established on his land, on both sides if he desire it, unless public convenience would be thereby prejudiced; but if the land of such person is most suitable on one side of such river, and not on the other, then the court may establish such ferry so as to produce the most public good, and least private injury; but no public ferry shall be established within less than two miles by water of any

Ib. Sec. 17.
Where same person owns the land on both sides, how, &c.
No ferry to be established nearer

than two miles to one already established.
Proviso—Sixteenth sections.

ferry already established, unless on any river at or within two miles of any town: *Provided nevertheless*, That a ferry may be established on any sixteenth section whenever the trustees of said sixteenth section think it advantageous to the township in which said section may be.

Ib. Sec. 18.
County courts may establish toll-bridges when necessary.
[a 1821—(25) *Sec.* 1.]
Penalty for injuring bridge or causeway, or endeavoring to evade payment of toll.

§ 28. The county court through whose county large creeks or watercourses pass, over which it may be too burthensome to build bridges by a county tax, may contract with any person or persons to build a toll-bridge or causeway, for which the court is hereby authorized to lay the toll to be levied on all persons, horses, cattle, and carriages, passing over the same, to be granted to the undertakers for such a number of years as the said court may agree upon for the building such bridge or causeway; and the builder or builders, and their successors, shall keep the same in constant repair, and in default thereof, the owners of such bridge or causeway shall forfeit all right and title to the toll thereof, during the continuance of the same out of repair; [a]and if any person or persons shall obstruct or demolish any such bridges or causeways, or shall pass round or through the gate or gates authorized to be set up by the said county courts, respectively, with intent to evade the payment of toll, he, she, or they shall, for every such offence, forfeit and pay to the person or persons having contracted with the said courts respectively, for such bridge or causeway, thrice the amount of the common toll authorized to be received by such person or persons, to be recovered before any justice of the peace having jurisdiction of the same, with costs of suit.

Ib. Sec. 19.
Keepers of toll-bridges to give bonds.
b *See* § 26.
Keepers of bridges and ferries, how made liable on their bonds.
Persons detained at public ferry may have warrant against the ferryman, &c.
Proviso.

§ 29. The county court before granting a license to any person or persons to build a toll-bridge or causeway, as authorized in the foregoing section of this act, shall take a bond in the same way and manner as is prescribed in establishing ferries, [b]for a sum not exceeding one thousand dollars; and if any person or persons shall at any time sustain damage in consequence of any ferryman or owner of the ferry, or keeper of a toll-bridge or causeway, not having complied with the conditions of his or their bond, the person or persons so damaged may bring an action of debt against such ferryman or owner of such ferry, or keeper of a toll-bridge or causeway, on his or their bond, in the name of the judge of the court of the proper county, and recover judgment for the non-performance of the said conditions, for so much damages as he, she, or they may have sustained, and thereupon take out execution, and cause the money to be made, and when made, to apply the same to his, her, or their use, which bond shall not be void upon the first or any other recovery; and it shall be lawful for any person or persons, detained at any public ferry by reason of the ferryman's not having good and sufficient boats, or other proper craft, and hands, or by neglecting to do his duty, to obtain a warrant from a justice of the peace, and recover of such ferryman or owner of such ferry, the sum of ten dollars, for every default, or neglect: *Provided*, That any such recovery shall not be a bar to any action for damages sustained by any person by reason of the insufficiency of said ferries and bridges. (1)

Ib. Sec. 20.
Penalty for establishing a ferry, &c. without license.

§ 30. If any person or persons shall establish a public ferry, toll-bridge, or causeway, contrary to the provisions of this act, he or they shall forfeit and pay five hundred dollars for every public ferry, toll-bridge, or causeway so established, to be recovered by indictment or presentment by a grand jury, in the circuit court of the county or counties in which such ferry, toll-bridge, or causeway, shall be so established; and every person or persons who may have any licensed ferry, toll-bridge, or causeway, and who shall demand and take a greater toll than is allowed him or them by law, or by order of the county court, shall forfeit and pay the sum of five dollars for every such offence, to be recovered by indictment or presentment of a grand jury, as prescribed in the foregoing part of this section.

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(1) The lessee of a ferry, is the person liable to the penalty for neglect. But where a person is employed on shares and for an indefinite time, he is to be considered as a mere servant, and the owner is liable. Taylor *v.* Rushing, 2 *Stewt. Rep.* 160.

For demanding and receiving unlawful toll.

Ib. Sec. 21. Judges to give this act in charge to grand juries.

§ 31. It shall be the duty of the judges of the circuit courts to give in charge to the grand juries of the different counties, at the opening of each term of said courts, this act, and the said grand jury shall present the overseers of every public road, bridge, and causeway, as well as the owners and keepers of toll-bridges, causeways, and ferries, which shall not or may not have been kept in such order or repair as required by law; and every person or persons who may have altered any public road without having obtained an order of court therefor, as is directed by the provisions of this act, or any such person or persons as may have erected any fence or bar, impediment, or fell trees or brush in any public road contrary to this act: and it shall be the duty of the solicitor of the circuit upon such presentments made by the grand jury, after giving such defaulter three days' notice, to move the court for judgment against such defaulter or defaulters in the same way as prescribed in the fifth section of this act: *Provided however*, That the court shall hear the excuse of any overseer or other person who may have violated the provisions of this section of this act; and on good cause being shown for default, no judgment shall be awarded.

Solicitor's duty.

Excuses to be heard.

Ib. Sec. 22. Overseer may contract for mile-posts and index-boards.

§ 32. Every overseer of roads in this state is authorized to contract with a carpenter to make all mile-posts and index-boards necessary for his district or precinct, of good durable wood, and for cutting the figures on the former, and for painting the latter, both of which shall be done in a good and proper manner, and it shall be the duty of the said overseer to attest his account, and deliver the same to the county court, who shall order the amount to be paid by the county treasurer, out of any moneys in the treasury belonging to the road fund.

To be paid for by the county treasurer.

Ib. Sec. 23. Overseer may engage wagons and teams, by exchange of service, or hire.

§ 33. When it may be necessary to use a wagon to haul materials for any bridge, causeway, or other purpose in repairing roads, the overseer of such road is authorized to exchange the labor of any hands bound to work on such road, for the use of a wagon or wagons and teams to be employed as aforesaid; and if any overseer find it impracticable to make such arrangement, he may hire a wagon or wagons when necessary, and present his account on oath to the county court, for the hire of the same, who shall pay the amount out of any moneys in the county treasury belonging to the road fund.

Ib. Sec. 24. Within what distance hands are liable to work.

§ 34. All persons liable to work on public roads, living within five miles of any part of any public road, may be appointed to work on the same, and all persons liable to work on public roads, living within three miles of any new road about to be opened, shall work on the same: *Provided*, That all persons liable to work on public roads, and living within ten miles of the main public road leading from the town of St. Stephens to the city of Mobile, and south of Basset's Creek on said road, shall work on the same: *Provided also*, That it shall be the duty of all persons liable to work on public roads, to work on some road;[a] and when any person or persons live at a greater distance than five miles from any road, they shall be apportioned to work on the nearest road to them; [b]but they shall not be compelled to work

Proviso.

Proviso.

a *See* § 46.

[b 1833—(25) *Sec.* 1.]

on any road lying more than seven miles from his or their place of residence, excepting the public route mentioned in the first proviso of this section.

Ib. Sec. 25. All fines, &c., under this act, to be paid to the county treasurer.

§ 35. It shall be the duty of all overseers, justices of the peace, clerks of the inferior and circuit courts, or other officers into whose hands may be paid any moneys arising from fines, penalties or forfeitures under this act, (except the fines prescribed in the ninth section of this act,) to pay the same over to the county treasurer of the county in which the same may be, within twenty days after the same may come to his, or their hands; and if any overseer, justice of the peace, clerk of the inferior or circuit court, or other officer, fail or neglect so to do, he or they shall forfeit and pay for such failure or neglect, double the amount so received, to be recovered by judgment of the circuit court, had on motion of the solicitor of the district, as prescribed in the fifth section of this act.

Ib. Sec. 26. Road fund.

§ 36. It shall be the duty of the county treasurers of the several counties of this state, to receive all moneys directed to be paid them by this act, to keep a separate and distinct account of the same, under the title of "road fund," which moneys shall be exclusively under the control of the county court, and shall be appropriated by them only for the purpose of opening new roads, building and repairing bridges, causeways, public roads, and for erecting mile-posts, and index-boards.

Ib. Sec. 27. Penalty for defacing mile-posts, &c.

§ 37. If any person shall be guilty of defacing or pulling down any mile-post, or index-board, such person, being convicted thereof before any justice of the peace for said county, shall forfeit and pay ten dollars for every such offence, to be applied to the improvement of such road.

Ib. Sec. 28. Penalty for neglect of duty in commissioners.

§ 38. All commissioners appointed by the court to lay out roads, who may refuse or neglect to perform the duty assigned them, shall each forfeit and pay for every such failure or neglect, a sum not exceeding twenty dollars, to be recovered as is provided in the fifth section of this act: *Provided,* That such fine shall not be imposed when a good and sufficient excuse may be offered.

Ib. Sec. 29. Apportioners to report apportionment to the clerk of county court.

§ 39. The apportioners appointed agreeably to the fifth section of this act, shall on or before the first Monday in April in each year, report to the clerk of the county court, the number of hands apportioned to each overseer within their respective bounds, to be filed in said clerk's office; on failure thereof each apportioner shall forfeit and pay not exceeding twenty dollars, to be recovered by judgment of the circuit court, had on motion of the solicitor of the circuit, as prescribed in the fifth section of this act: *Provided,* That all good excuses shall be heard.

Ib. Sec. 30. Overseers authorized to purchase timber,

§ 40. In those places where it is necessary to purchase timber to repair or causeway roads, the overseer of such road is authorized to contract for such timber as will be necessary to repair such road; and where timber cannot be had near a road where it may be wanting, the overseer may contract for hauling the same, which contract shall be laid before the judge of the county court and commissioners of roads and revenue, who are authorized and required to order payment to be made for as much as they shall judge reasonable, out of the county treasury.

and to be paid for by the county.

Ib. Sec. 31. Overseers, how made liable for failing to prosecute defaulters.

§ 41. Where the overseer of any road fails to prosecute defaulters as the law directs, for failing to work on a road as warned, it shall be lawful for any person or persons that are appointed to work on said road, to apply to a justice of the peace near the precinct where such overseer may reside; and the said justice is hereby required to issue a summons against such overseer, requiring him to appear before said justice, and show cause why the defaulters were not prosecuted; and if such overseer fails to appear or show cause as required, the justice shall give judgment with costs for as much as the fines would amount to from the defaulters complained of, and the officer collecting the same shall pay it over into the county treasury.

Ib. Sec. 32. Overseer may appoint an agent to warn hands.

§ 42. The overseer of every road in this state shall have authority to appoint one fit person in his precinct, to warn the hands liable to work thereon; and notice thus served shall be as binding as if served by the overseer in person; and the person appointed and performing said duties, shall be exempted from working on roads.

Ib. Sec. 33. Repealing clause.

§ 43. The act entitled "An Act to reduce into one, the several acts concerning roads, bridges, ferries, and highways," passed December 21st, 1820, and an act entitled "An Act to reduce into one the several acts concerning roads, bridges, ferries, and highways," passed December 19th, 1821, and all acts and parts of acts coming in conflict with the provisions of this act, are hereby repealed: *Provided*, That this shall not be construed to apply to any turnpike or other road authorized by name, by any act of the legislature, nor to the appointment of overseers in incorporated towns, or to any of the duties of overseers or hands in said towns.

Ib. Sec. 34. This act not to extend to Mobile.

§ 44. Nothing in this act contained shall be construed to extend to the county of Mobile.

Ib. Sec. 35. Penalty on clerks and sheriffs for neglect of duty under this act.

§ 45. If any clerk or sheriff shall fail to perform any of the duties required of him by any of the provisions of this act, he shall on conviction, forfeit and pay the sum of fifty dollars, to be recovered in the same manner as is provided for by the fifth section of this act.

1828—(39) *Sec.* 1. (a *The foregoing.*) *See* § 21, 34. *Preceding act explained.*

§ 46. The eleventh and twenty-fourth sections of the above recited act[a] shall not be so construed as to require any person liable to work on roads, to work more than ten days in any one year, either in the cutting out of new roads, or in working on roads already established by law.

b 1828—(48) *Sec.* 1. Vacancies of overseers and apportioners.

[b] § 47. The judge of the county court, and commissioners of revenue and roads, may, at any time when vacancies occur, appoint overseers of roads and apportioners of hands.

c 1829—(12) *Sec.* 1. County court may establish ferries, to be attended in case of high water only.

[c] § 48. The county courts are authorized to establish ferries over creeks and small rivers, when it shall appear necessary and proper, and shall require bond and security that the said ferry or ferries shall be kept in good order, and attended at such times as said creeks and rivers cannot be otherwise safely passed, without compelling the owners of such ferries to attend them, when the streams can be conveniently forded.

1832—(18) *Sec.* 1. Private ways. How opened and kept in repair. Damages. Petitioner not exempted from working on other roads.

§ 49. It shall be lawful for the courts of roads and revenue in each county, on the application of any one or more persons, to grant and establish private roads, not exceeding fifteen feet wide: *Provided*, That they shall not be opened through any person's plantation: *And provided always*, That the person or persons petitioning, shall be bound to open and keep such roads in repair; and shall pay to the owner of the soil over which said roads shall run, all damages that may be assessed against the petitioner or petitioners, for the benefit of the said owner, in the manner of assessing damages in like cases of public roads: *And provided further*, That such petitioner or petitioners shall not be exempt from working on public roads, on account of working on such private roads.

1832—(32) *Sec.* 1. Commissioners of R. and R. may authorize the

§ 50. It shall be lawful for the commissioners of roads and revenue of the different counties in this state, to authorize the opening of any road or roads which they may conceive to be of public utility, running parallel with any turnpike road or roads, which may run through their opening of any road of public utility, in certain cases.

respective counties, wherein the limits of said turnpike roads are not defined by the charter granting the privileges of the same: *Provided*, That no road or roads so opened by said commissioners, shall approach nearer than three miles on either side of said turnpike roads.

Ib. Sec. 2. Owners of turnpike roads not to receive toll for travelling on any road opened under the first section of this act.

§ 51. If any owner of such turnpike roads shall collect or receive any toll from any person or persons, who may travel any road or roads which may be opened by the commissioners in conformity to the provisions of the first section of this act, he, she, or they, so offending, shall forfeit and pay for every such offence the sum of ten dollars, recoverable with costs before any tribunal having competent jurisdiction thereof, which amount so collected shall be paid, one half to the informer, and the other half to the use of the county wherein such offence may be committed.

1832—(34) *Sec.* 1. Court of roads and revenue authorized to change state road.

§ 52. The courts of roads and revenue in the several counties in this state, are hereby authorized to change the route of any state road which may run through their respective counties, when the same can be done the better to subserve the public convenience: *Provided*, That such change shall be made in the same manner that changes are required to be made in county roads: *Provided also*, That no change shall be made in any state road at the point where the same may cross county boundaries, unless the adjoining county will make a corresponding change.

SALARIES.

Acts consolidated. 1819—(5) *Sec.* 1.

§ 1. The several officers hereinafter named, shall receive annually and payable quarter-yearly, for all the duties required of them by law, the following sums, to wit:

[1833—(33) *Sec.* 2.]

The governor, twenty-five hundred dollars.

The secretary of state, one thousand dollars, with such fees as may be allowed by law.

The comptroller, one thousand dollars.

The treasurer, one thousand dollars.

[1832—(6) *Sec.* 4.]

The judges of the supreme court, seventeen hundred and fifty dollars each.

[a 1832—(15) *Sec.* 4.]

The judges of the circuit court, seventeen hundred and fifty dollars, [a]except those elected after the 21st January, 1832, who shall receive fifteen hundred dollars each.

The attorney general, four hundred and twenty-five dollars, and

The several solicitors, two hundred and fifty dollars each,—with such fees or perquisites of office as may be allowed by law.

1833—(23) *Sec.* 1. President of State Bank, salary 1000 dollars. Cashier's, 1800 dollars. [b 1828—(18) *Sec.* 1.]

§ 2. The president of the Bank of the State of Alabama, and his successors in office, shall receive an annual salary of one thousand dollars, payable quarter-yearly, out of the profits of said bank. And the cashier of said bank, and his successors in office, shall receive an annual salary of eighteen hundred dollars, payable quarter-yearly, out of the profits of said bank. [b]The teller shall receive an annual salary of twelve hundred dollars, and the clerk an annual salary of one thousand dollars, to be paid out of the dividends of the bank.

Ib. Sec. 2. Salary of president of branch at Montgomery, 800 dolls.

§ 3. The president of the branch of the Bank of the State of Alabama, at the town of Montgomery, and his successors in office, shall annually receive the sum of eight hundred dollars, payable quarter-yearly, out of the profits of said branch bank.

Ib. Sec. 3. Cashier's, 1500 dolls.

§ 4. The cashier of said branch bank, and his successors in office, shall receive annually the sum of fifteen hundred dollars, to be paid quarter-yearly out of the profits of said bank; and the teller shall in like manner receive an annual salary of one thousand dollars, payable as above; and the book-keeper shall also receive an annual salary of one thousand dollars, payable as aforesaid; and the discount clerk shall in like manner receive an annual salary of eight hundred dollars, payable as above; and so soon as the additional capital now authorized by law is obtained, his salary shall be one thousand dollars per annum. Teller's, 1000 dollars. Book-keeper's, 1000 dolls. Discount clerk's, 800 dolls.

§ 5. It shall not be lawful hereafter for any officer in the Bank of the State of Alabama, or any branch thereof, to take or receive from any person or persons, trading with the same, any fee or perquisite as compensation for placing on the offering book any note or bill of exchange that may be offered out of bank hours; but it shall be the duty of said officers, to place on the offering book any note or bill of exchange, that may be tendered to the bank at any time previous to the hour assigned for the board of directors to meet. *Ib. Sec.* 4. Officers not to receive fees for certain acts. Further duty in regard thereto.

§ 6. The salary of the president and officers of the branch of the Bank of the State of Alabama, located at Montgomery, shall commence from the date of their respective appointments. Salaries of officers to commence when.

NOTE.—Quartermaster-general's salary, fixed at two hundred dollars, by act of January 29, 1829. See "Militia," Chap. 4,—§ 12. State printer's, two thousand five hundred dollars. See "Laws and Journals,"—§ 12.

SALT-PETRE.

§ 1. ANY person or persons who may be engaged in the manufacture of *salt-petre*, in this state, shall enclose with a strong substantial fence at least ten rails high, all the works which may be used by him or them, within three days after he or they shall erect such works; and all those who may have such works in operation, shall enclose the same in like manner, on or before the first day of March next. 1826—(28) Salt-petre works to be enclosed.

§ 2. If any person or persons shall fail to comply with the requisition of the first section of this act, such persons shall, on conviction thereof, be fined by the jury trying the same, in a sum not less than twenty dollars, nor more than one hundred dollars, to be paid to the use of the person or persons aggrieved thereby. Penalty.

SALT SPRINGS.

§ 1. THE governor is hereby authorized to appoint one fit and proper person, who shall have power to lease the salt-springs and lands donated by the congress of the United States, by the act of the second of March, eighteen hundred and nineteen, to this state, for a term not exceeding that stipulated in said act of congress, on such terms as will ensure the working the same most extensively, and most advantageously to this state. 1819—(20) How leased.

SCHOOLS, AND SCHOOL LANDS.[1]

Con. Ala. Art. 6. Schools established and encouraged.

§ 1. SCHOOLS, and the means of education, shall for ever be encouraged in this state; and the general assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant.

1819—(16) *Sec. 1.* Three agents to be elected in each township.

Vacancies, how filled.

Successive elections.

[a 1820—(23) *Sec. 2.*] Who qualified electors.

§ 2. It shall be the duty of the chief justice of the county court, in each county in this state, as soon as may be after the passage of this act, to appoint two proper persons in each township or fractional township, within their respective counties, whose duty it shall be, giving ten days previous notice of the time and place thereof, to hold an election within the same; at which time and place, there shall be elected by the qualified electors therein, three agents, who shall continue to discharge the duties hereinafter prescribed, for the term of three years from the date of their election, and until their successors shall be elected:—should vacancies occur by death, resignation or removal of any of the agents, the same shall be filled by elections as aforesaid, the like notice of the time and place being given by the remaining agent or agents, or where there shall be no agent, by the chief justice as aforesaid; and the agents so elected shall, at the expiration of each and every term, hold or cause to be holden an election as aforesaid, for three successors.—[a]All white male persons over the age of twenty-one years, who may reside in each township, at the time of the election of the agents, shall be deemed qualified electors.

Ib. Sec. 2. Agents empowered to lease or rent 16th sections.

Leases not to exceed six years.

[b 1820—(23) *Sec. 1.*]

§ 3. The said agents shall have power to let out on lease for the purpose of improving the same, or to let out at annual rent, as they may think proper, the sections of land reserved by congress for the support of schools, within each township in this state: *Provided,* That public notice shall be given by said agents, in five or more public places in the county in which such township may lie, of such intended leasing or renting: *And provided also,* That no lease shall be for a longer term than [b]*six* years after the time of leasing: *Provided,* That all leases shall expire on the first day of January, and that not more than one half of the land so leased shall be cleared.

Ib. Sec. 3. Lessee to covenant against waste,

and to make improvements.

§ 4. The said agents shall have power to lay off the same into convenient lots, of not exceeding eighty acres each, except in cases of fractional sections. And in every lease which shall be made, the lessee shall be bound in a suitable penalty not to commit waste on the premises, by destroying timber or removing stone, or any other injury to the lands whatsoever, and shall also be bound in a sufficient penalty, that he will make such improvements on the lands as shall be deemed proper by said agents. All obligations given by the lessee for the payment of rent, shall be in the name of the agents for the use of the inhabitants of the township, and shall be recovered by them, for the use of the same, by action at law if necessary.

Ib. Sec. 4. Agents to remove intruders,

§ 5. The said agents shall have power within their respective townships, by legal process, to remove any person or persons from the reserved sections, when such person or persons have not taken a lease for the same, or shall neglect or refuse to deliver quiet and peaceable possession of the premises, when his, her, or their lease shall have expired; they shall also inspect and inquire into any waste or trespass committed on any of the reserved sections aforesaid, by cutting or carrying off timber or stone, or any other damage whatsoever, whether by persons residing thereon or others; and the agents, or a majority of them, are hereby authorized and required, when waste or trespass shall have been committed, to proceed against the person or persons aggressing, according to the laws in such cases made and provided; and actions on the case aforesaid, shall be sustained by the whole or a majority of the agents of the townships respectively; and the damages recovered shall be applied to the same purposes as the proceeds of the rents from the lands, on which the damages were sustained.

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[1] The first act inserted under this title was substantially repealed, by the act of January 1, 1823; but its provisions were afterwards restored so far as to leave it to the option of the inhabitants of each township, under which of the two laws their school lands should be leased, and the funds arising therefrom applied.—See § 31.

and to inquire into waste and trespasses.

Their right to sue.

Ib. Sec. 5.
Agents to contract with teachers, &c.

§ 6. The agents shall contract with a teacher or teachers, and for a school-house or houses, when and wheresoever they may think proper within the township; and the agents aforesaid are hereby made the trustees of such schools, and are vested with all necessary power for the general superintendence, due organization, and well-being of every such school or schools, applying with impartiality the proceeds of each section to the purposes of education alone, within the particular township of six miles square, or fractional township within which such section is situated, in such manner, that all the inhabitants therein may partake of the benefits thereof, according to the true intent of the reservation.

Funds applied to purposes of education alone.

Ib. Sec. 6.
Agents to give bond.

§ 7. It shall be the duty of the county courts or chief justices respectively, as soon as may be after the election of said agents, to take their several obligations with good and sufficient securities, for adequate sums of money, conditioned for their faithful performance of all the duties severally assigned, and made payable to the chief justice of said court, who, upon neglect or failure of any of said agents, shall put his or their obligation in suit: and if such action or actions be bottomed on neglect, so as to recover damages only, the one half of such damages shall go to the chief justice, and the other half to the inhabitants of the township which shall have sustained the injury; but if such action or actions be predicated on pecuniary considerations, which have gone to the injury of the inhabitants of such township, by any such agent or agents, then and in that case, the other members of the county court shall issue an order to the treasurer of the township, in favor of the chief justice, for a sufficient amount to remunerate him for his expenditures, in the performance of the duties required of him, which amount the treasurer is hereby required to pay; and upon recoveries had by the chief justice, against any such agent or agents, for moneys originally due the people of such township, it shall be the duty of the chief justice to pay over the amount to the agent for the time being. And it shall be the duty of the county courts also to know by oath or otherwise, that the securities tendered in any case are good and sufficient.

Proceedings against agents.

Ib. Sec. 7.
One of the agents to be appointed treasurer.
His duties.

§ 8. The agents at any time to be elected under this act, shall appoint one of their own body to act as treasurer, whose duty it shall be to receive and pay over annually to his successors, all moneys which may remain in his hands, after satisfying and defraying the expenses incident to establishing said school or schools, and to paying a teacher or teachers; and a statement of the same, together with a schedule of the number and size of the lots into which they may have divided the sixteenth section, the times and amounts for which they were severally leased or rented, and the persons with their securities, to whom they were rented or leased, to deposit in the office of the clerk of the county court.

Ib. Sec. 8. Agent's oath. § 9. Said agent or agents shall, before they proceed to the discharge of the duties of their office, take and subscribe the following oath: "I, —— ——, do solemnly swear (or affirm, as the case may be) that I will, to the best of my abilities, with honesty and fidelity, perform all the duties which by law are assigned to me, or may be assigned to me, as agent for the management of the sixteenth section, so long as I continue in the exercise thereof: So help me God." Which oath, together with their bonds, shall be deposited in the office of the clerk of the county court: *Provided,* That it shall be optional with the agents, to let the settlers, or improvers remain on the sixteenth section, a time sufficient to remunerate them for their trouble, not exceeding three years from the first settlement thereof. How long settlers may be permitted to remain.

Ib. Sec. 9. Section divided by county line. § 10. In any case where the sixteenth section may be divided by any county line, it shall be the duty of the agents from each county, elected or appointed as aforesaid, to act jointly for the government of any sixteenth section divided by county lines in the manner aforesaid.

1820—(24) *Sec.* 1. Settlers on 16th sections allowed to remove mill-works, &c. § 11. Any person or persons who have settled on the sixteenth section in any township, are authorized to remove any mill, water-works, or other machinery, which may have been erected by him, her, or them, on the same: *Provided,* That the agents or commissioners of the sixteenth section, in each township, do not purchase the same, under such rules and regulations as are hereinafter specified.

Ib. Sec. 2. Agents may purchase such works. § 12. The agents or commissioners of school lands in each township, are hereby vested with power and authority to purchase any mills or other machinery erected by any settler on the sixteenth sections, on such terms as they may deem equitable and just. And the purchase-money shall be paid by said agents or commissioners, out of the money arising from the rents or leases of the sixteenth section, on which such mill or machinery may be erected.

Ib. Sec. 3. This privilege to extent to university lands. § 13. The provisions of the foregoing sections shall extend to settlers on the seventy-two sections reserved by the state for the purposes of a seminary of learning.

1823—(2) *Sec.* 1. Three school commissioners to be appointed for each township. § 14. The court composed of the judge of the county court and the commissioners of revenue and roads, of each county of this state, or the court which may be authorized to levy the county tax, shall, at their first session held after the first day of January next, appoint three freeholders or householders in each township in the county, (where the population of the township will admit thereof,) who shall be called school-commissioners; each of whom, while he continues to reside in the township, shall continue in office for four years from the time of his appointment, and until his successors shall be duly qualified, according to the provisions of this act. To continue in office four years.

Ib. Sec. 2. Commissioners, how appointed, when the township is divided by a county line. § 15. Where a county line divides a township, the school commissioners thereof shall be appointed by the court aforesaid of the county containing the greater part thereof; and shall cause their reports and accounts to be rendered to such court, and shall in all respects, as to the objects of this law, be as completely within the jurisdiction and control of such court, as if the whole township was within such county.

Ib. Sec. 3. Commissioners to take oath. § 16. Each of the school commissioners, appointed in pursuance of this act, before entering on the duties of his office, and within one month after his appointment, shall, before some judge or justice of the peace, take and subscribe the following oath, and cause the same to be delivered to the clerk of the court aforesaid, whose duty it shall be to file and preserve the same in his office, to wit: "I, —— ——, do solemnly swear, (or affirm, as the case may be,) that I will to the best of my skill and ability, and without partiality or favor, discharge the duties of school commissioner of township ——— in range ——, so long as I continue in said office; So help me God."

Ib. Sec. 4. Vacancies filled by county court.

§ 17. Whenever a vacancy shall occur by the death, removal, or refusal to act, or disqualification of any of said commissioners from any other cause, the court aforesaid, so soon as the same shall be known to them, shall proceed to fill such vacancy; and in like manner, whenever said court shall deem it expedient in and for any township in which such appointment shall not have been made, they shall proceed to make such; and each commissioner so appointed shall, under the restrictions aforesaid, hold his office for four years from the time of his appointment, and until his successor shall be duly qualified.

Ib. Sec. 5. Acts of majority valid.

§ 18. In all the official proceedings and contracts of said school commissioners, the acts of a majority, or of the one in office, if but one be in office, shall be in all respects as valid as if done by all three.

Ib. Sec. 6. Commissioners to lay out section into lots.

§ 19. The school commissioners of each township, as soon as practicable, shall, with the assistance of a skilful surveyor to be by them employed, and who shall act under their directions and instructions, proceed to lay out the section numbered sixteen, or such part thereof as they may deem expedient, into lots containing not less than forty nor more than one hundred and sixty acres, and make two plats of such survey; said commissioners shall select and mark on said plats, such lot or lots as they may think proper to reserve from cultivation, for the benefit of the timber thereon; and said commissioners shall on said plats, distinguish each lot by a number marked thereon; and retain one of said plats, and cause the other to be filed in the office of the clerk of the court aforesaid, for the inspection of all persons concerned.

Lots reserved for timber.

Ib. Sec. 7. Lots reserved, to be for benefit of lessees generally, &c.

§ 20. The lot or lots so reserved for the benefit of the timber shall, until otherwise directed by law, be for the common benefit of the lessees or tenants in said sixteenth section; but the timber thereon, or any part thereof, shall not be cut down, so long as there shall be sufficient on the other lots of the section respectively, of which matter said school commissioners shall determine, and may from time to time, by order, (to be recorded and reported with their other proceedings as hereinafter directed,) authorize the tenants on said section to cut down and remove timber from the lots reserved, in such quantities, and for such person, towards the support of their respective tenements, as said commissioners may deem consistent with the interest of their township.

Ib. Sec. 8. Term of lease.

§ 21. The school commissioners aforesaid shall, from time to time, at or before the expiration of the leases on said sections now in force, proceed to lease the several lots so laid out, except those reserved as aforesaid for timber; each lease shall be for a term not exceeding ten years, at the discretion of the commissioners, commencing on the first day of January: the commissioners shall require and stipulate for such improvements on the tenement or lot, as they may deem expedient, and may, in any case when they may think it necessary, require security for all rents and improvements; a rent shall be reserved to be paid annually on the first day of January, but where the value of the improvements to be made on the lot, in the opinion of the commissioners shall so require, they may stipulate that the annual rent shall commence and be payable at a certain period after the commencement of the lease: in all cases where improvements are required to be

Stipulations for rent and improvements.

Leases made by auction.
Notice.
Lessee to covenant against waste, &c.

made, and in all other leases in which said commissioners deem it expedient, bond in such penalty as they shall prescribe, and such security as they may approve, shall be given and made payable to said commissioners and their successors, for the use of the township; the leases shall be offered at some place in the township, at public auction, to the highest bidder; at least six weeks' previous notice of the time and place thereof shall be given, by advertisement put up at least at four public places in the township, and at the door of the court-house, and if the commissioners deem it expedient, in some neighbouring newspaper: by the terms of lease, the lessees shall be bound to treat the land, houses, and improvements in a careful and husbandlike manner; to commit no waste, and shall be under such further restrictions as to cutting timber, taking away stone, or in any other respect injuring the lot so leased, or the lot or lots reserved for timber as aforesaid, as said trustees may deem expedient. And if any such lessee, or person or persons claiming under him, shall commit any waste on the lot so leased, or the lot reserved for timber, or fail to pay said annual rent, such lease shall be forfeited if the commissioners so require: *Provided*, That the commissioners for the sixteenth section in township three, range eleven, west of the meridian of Huntsville, be authorized to lease said section, or any part thereof, for any number of years.

Ib. Sec. 9.
Notice to parents and guardians.
Division of townships into school districts.

§ 22. The school commissioners of each township who shall first act under the authority of this law, within one month after their appointment, and the school commissioners of each township, from time to time, as they may deem it expedient, shall give ten days' notice by advertisement at three or more public places in the township, requiring all parents and guardians residing therein, to make known to them or one of them, the number of pupils which such parents or guardians respectively wish to enter at school; and said commissioners shall moreover collect such information from such other sources as may be in their power: they shall then proceed to divide the township into convenient school districts, so that each district shall contain not more than forty nor less than thirty scholars, or as near that number as may be practicable.

Ib. Sec. 10.
Elections of trustees.
Notice of election.
Return of election to be made to commissioners.

§ 23. On application to the school commissioners by any three or more freeholders, or house-holders residing in any such school district, they shall issue their warrants directed to one of the persons so applying, to warn all the inhabitants of each district qualified to vote at general elections under the constitution of this state, to meet at a certain time and place in the township named in said warrant, to vote for three trustees of said school district; notice of the time, place, and object of such election shall be given by advertisement, which the commissioners shall cause to be set up at two or more public places in the district, at least fifteen days before such election, and notice, so far as the same can conveniently be done, shall also be given by the person to whom the warrant aforesaid shall be directed, to the several voters of each school district, personally, or by leaving the same in writing at their respective dwellings; the commissioners shall appoint two judges and a clerk of said election, who shall each, before some judge or justice of the peace, swear (or affirm) that he will faithfully and impartially execute the duties of said appointment: the clerk shall keep a fair list of all the votes taken; the list and return of the election shall be subscribed by said judges and clerk, and transmitted to the commissioners of the township, who shall decide in cases of contested elections; the trustees so elected shall continue in office for two years from the time of such election, and until their successors shall be elected: *Provided*, They shall, during that period, continue to reside

Vacancies.

Majority of trustees may act.

in the district. Vacancies which may occur by removal, expiration of the term of office, or other cause, shall in like manner be filled by elections, notice thereof to be given, and to be conducted as aforesaid; and in all official proceedings and contracts of the trustees of a district, the acts of a majority, and if but one be in office, the acts of that one, shall be in all respects as valid as if done by all the three.

Ib. Sec. 11.

Commissioners and trustees to be a body corporate.

§ 24. The said school commissioners of each township, and said trustees of each school district, for the time being, and their successors respectively during their continuance in office, shall be and are hereby constituted bodies corporate, and by said corporate name may sue and be sued; and said trustees shall have power to hold in trust, for the purposes of education, real estate in their respective townships, not exceeding two acres, and personal estate not exceeding the value of five hundred dollars, to them and their successors in office, for ever; and in all cases where it shall be necessary for the school commissioners of a township or trustees of a school district, to contract, appear, or act in their corporate character, any deed, warrant, or other writing, executed by them, or a majority of those acting, or by any one acting solely under the provisions of this act, shall be in all respects as valid and effectual in law, as if the same were executed under their common seal as a corporation.

Ib. Sec. 12.

Commissioners may appoint clerk and treasurer.

Clerk's duties.

Court may attach clerk for delinquency.

Treasurer's bond.

His duties.

§ 25. The school commissioners shall have power to appoint and discharge at pleasure, a clerk and treasurer. The clerk shall record the proceedings of the commissioners, file and preserve such papers as they may direct, and furnish the treasurer from time to time with a statement of the debts and moneys which such treasurer may be authorized to receive. The clerk shall, moreover, on the first day of the first session of the court aforesaid, held after the first day of January in each year, transmit to said court a statement of the proceedings of the commissioners for the twelve months next preceding, and of the school lands and funds of the township, setting forth the lots leased, or to be leased, dates of the leases, names of the lessees or tenants in possession, rates of rent, amount thereof paid, or remaining due and unpaid, and the steps taken for the recovery of the same, amount of debts due to the township, amount of funds in hand, sum allotted to each school district, and amount thereof paid out by the treasurer, names of the teachers for the last twelve months in the different districts, and terms of their engagement, number of pupils at school in each district, number paid for out of the school funds, sums appropriated for the purchase of ground, building school-houses, or for other objects connected with the schools:—on failure of any such township clerk to transmit a statement as aforesaid, said courts, respectively, are hereby empowered to compel such clerk by process of attachment or otherwise, to bring before them the above described records. The treasurer shall give bond in such penalty as the commissioners shall prescribe, with approved security, payable to them and their successors in office, conditioned that he shall faithfully perform the duties of his appointment, account for and pay over according to law and the regulations and orders of said commissioners and trustees respectively, all moneys which he shall receive by virtue of said appointment: it shall be the duty of such treasurer to receive all moneys which may become due for rents, or in any other way accruing to the school fund of the township, or of any school district therein; to keep fair and regular accounts, and on or before the first day of January in each year, to deliver to said commissioners of the township, or their clerk, a statement thereof for the twelve months next preceding, showing the several sums received and paid out, vouchers therefor, the debts remaining due and unpaid for rent or otherwise, and the balance remaining in his hands; which balance he shall at the same time produce before said commissioners.

Ib. Sec. 13. Funds to be apportioned annually among the districts.

[a 1833—(12) *Sec.* 1.] Children may be sent to any school.

§ 26. The commissioners of each township shall annually, at a meeting by one of them to be called for that purpose, apportion the funds then in hand among the several school districts therein, in proportion to their respective numbers of pupils entered to school for the preceding year as aforesaid, and their clerk shall forthwith furnish the treasurer with a copy of such order of apportionment; [a]and it shall be lawful for any parent or guardian to send his or her children or wards to any school in or out of the township which he or she may choose; and it shall be the duty of the school commissioners of such township, on satisfactory showing of the services performed by the teachers of such children or wards, to pay them for tuition out of the proportion due such parent or guardian from the proceeds of the sixteenth section of such township.

Ib. Sec. 14. Trustees to employ teachers.

Teachers to be examined by commissioners, and to produce their certificate.

§ 27. The said trustees of each school district, shall have power to employ a teacher or teachers for the same, at an annual salary, or at a stated price for each scholar, or on such other terms as they may deem expedient; to cause a school-house to be built and kept in repair; to purchase books and stationary for the use of the school; and make regulations for the use and preservation of the same, and for the admission of pupils into the school; to designate the pupils who shall be admitted to the school without tuition fees. No teacher shall be employed by any of the said trustees, until he shall have been duly examined by the commissioners of the township, and shall produce their certificate of his qualification, and that they are satisfied he is of a moral character. The clerk of the commissioners shall keep a list of the persons to whom, and dates when, such certificates are given. The trustees shall have power by order or warrant on the treasurer of the township, to direct such moneys as may be required for any of the purposes as aforesaid, to be paid out of said school fund of the district.

Ib. Sec. 15. Contributions disposed of as other funds.

§ 28. Should the trustees of any school district raise money in aid of their school funds, by subscription or otherwise, and direct the same to be paid to the township treasurer, he shall receive and keep an account thereof, report the amount to the township clerk, appropriate the same as the said trustees may direct, and he and his securities shall be liable for all defaults as to the same, as fully as if it were set forth in his bond aforesaid.

Ib. Sec. 16. Clerks of courts to transmit annual abstracts to the general assembly.

a *See* § 25.

§ 29. The clerk of each of the courts aforesaid, shall transmit to the general assembly, within the first ten days of each stated annual session, an abstract of the last annual statements made to said court, pursuant to the twelfth section of this act,[a] setting forth the amount of rents of school lands in each township; amount paid; amount due and unpaid; number of school districts; amount of funds allotted to each; amount of funds raised by subscription or otherwise; amount of compensation paid to each teacher; number of pupils in each particular district, and what number are educated gratis; and on producing to said court the receipt of the clerk of the house of representatives for such statement, he shall be allowed by the court aforesaid, for said service, a sum not exceeding five dollars, to be paid out of the county treasury.

Ib. Sec. 17. Repeal.

b *Preceding act.*

§ 30. So much of the act entitled "An Act to provide for leasing for a limited time the lands reserved by the congress of the United States, for the support of schools within each township in this state, for a seminary of learning, and for other purposes,"[b] and of all other acts, as is contrary to the provisions of this act, is hereby repealed; and the agents designated by said act, shall pay over and deliver to said commissioners of their respective townships, so soon as they shall be qualified to office, all moneys, obligations, evidences of leases, and other contracts and accounts remaining in their custody respectively, by virtue of said recited act. Said commissioners shall cause a statement thereof to be recorded, and shall deposit said moneys with their treasurer. All debts due and accruing to said agents of any township, and all actions, rights, and causes of actions heretofore vested in them, shall be, and are hereby vested in the commissioners of such township; and suits therefor may be instituted or prosecuted in the names of said agents or of said commissioners, as they may deem expedient; and the contracts heretofore made, and debts contracted by said agents, under the authority of the act aforesaid, shall be as binding on such commissioners as on said agents; and said commissioners may order the same to be paid out of the general school fund of the township.

Former agents to pay over to commissioners.

Commissioners' right of action, and liability on agents' contracts.

§ 31. It shall be lawful for the inhabitants of the several townships in this state, as they may severally judge most convenient and beneficial, taking into view the peculiar situation of their respective townships, to regulate the leasing of the sixteenth sections, and the application of their proceeds, according to the provisions of the laws in force at the commencement of the last session of the general assembly, or at their option, according to the act entitled "An Act to provide for the leasing of the sixteenth sections, and for the application of the funds accruing therefrom to the purposes of education," passed the first day of January, eighteen hundred and twenty-three.[1]

1823—(27) *Sec.* 1. Inhabitants of townships may elect between the last law and the one preceding.

§ 32. The determination of the inhabitants of the several townships made in pursuance of this act, shall be made known by the trustees for each township to the judge of the county court of the county in which the sixteenth section lies, to which any such determination may relate, within two months after the first day of January, eighteen hundred and twenty-four.

Ib. Sec. 2. Judge of county court to be notified of the choice.

Sales of Sixteenth Sections.

Whereas, by an act of the congress of the United States, the legislature of Alabama is authorized, by and with the consent of the inhabitants of the several townships in this state, to sell the sixteenth sections thereof, and invest the proceeds of such sales in some productive funds for the use of schools only in the respective townships wherein the said sections may be situate—therefore,

1828—(26) Preamble.

§ 33. *Be it enacted, &c.* That it shall be the duty of the school commissioners of the several sixteenth sections in this state, or a majority of them, on the second Monday in May next,[2] on giving twenty days' public notice by advertisement in three of the most public places in the respective townships, to hold an election to ascertain the sense of the qualified electors, who may be inhabitants of such townships, respecting the sales of their sixteenth sections under the provisions of this act, and the commissioners conducting said elections shall, before they open the polls for said elections, take an oath before

Sec. 1. School commissioners to take the sense of the inhabitants of townships as to the sale of the 16th sections.

Commissioners to take oath.

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[1] That is, either according to the two first acts in this title, or according to the act immediately preceding.

[2] The commissioners may, by act of 1830, hold the election at any time.—See § 49.

some person authorized to administer the same, "that they will faithfully and impartially conduct the same, and make a true return thereof according to law;" and they shall provide a ballot-box, and cause the voters to write upon their tickets, "sale," or "no sale;" and they shall keep the polls open from ten o'clock in the forenoon, until four o'clock in the afternoon; at which time they shall close the polls, and count out the ballots, and certify the result to the judge of the county court of the proper county; and if there be no judge in office, then they shall certify the same to the clerk of the county court of the proper county, and shall keep the ballot-boxes, with the votes therein, sealed up for twenty days, when they shall be destroyed, if no person contests said election. And in the event any such election be contested, then the judge or clerk, as the case may be, shall have power to decide said contested election: *Provided*, That in any case where a township shall be divided by a county line, the return of the ballot, and the certificate of the result of the election herein required by the said commissioners, shall be made to the clerk and to the judge of the county court of that county, in which the majority of the commissioners of any such township may reside.

Result to be certified to judge of county court.

Contested election.

Return where township is divided by county line.

Ib. Sec. 2.

When a sale is determined upon, judge to issue order of sale to the commissioners.

§ 34. In all cases where a majority of the qualified electors in any township have chosen to sell the sixteenth section therein, and no person has contested and set aside the election; it shall be the duty of the judges of the county courts of the proper counties, and of the clerks of such counties as have no judge in office, at the expiration of twenty days from such elections, to issue an order of sale to the commissioners of such sections as are elected to be sold; and said commissioners shall, on the reception of such order of sale, cause the sections so elected to be sold, to be surveyed in such manner as they may think will command the highest price for the same, in lots which shall not exceed eighty acres each, and shall cause a fair plat of the same to be made out by the surveyor, and shall fix a minimum price upon each lot or part, being first sworn "truly to value the several lots so surveyed, and to fix the minimum price thereon;" and some one of said commissioners shall keep said plat of said section, with the minimum price fixed upon each lot or part, and shall exhibit the same to any person wishing to examine the land before sale; and the said plat shall moreover be exhibited to all persons wishing to examine the same on the day of the sale hereinafter provided for.

Commissioners to divide sections into lots, and fix the minimum price.

Ib. Sec. 3.

Thirty days' notice of sale to be given.

§ 35. As soon as said sections are surveyed, as hereinabove provided for, the said commissioners, or a majority of them shall, on giving thirty days' previous public notice, by advertisement in three public places within the township, and such other public notice as said commissioners may think fit, of the time and place of sale, and terms of sale, go upon the ground, and cause the several lots of said sections to be offered for sale, and sold to the highest bidder, above the minimum price, at public auction, on a credit of one, two, three, and four years, in equal annual instalments, the purchaser securing the several payments, by separate notes, with two or more good securities, to be approved of by the commissioners, which notes shall be made payable to "the president and directors of the Bank of the State of Alabama," and shall bear interest at the rate of six per centum per annum from the day of sale; and the said commissioners shall moreover give to the purchaser or purchasers of one or more lots, certificates of purchase, showing the quantity of land in acres, and describing the lot or lots, part or parts so purchased, and stating the amount of purchase-money agreed to be given, which certificate shall be acknowledged in open court, or before some judge or justice of the peace for said coun-

Mode and terms of sale.

Notes payable to the bank, with 6 per cent. interest.

Purchaser to have a certificate.

ty, and shall operate as a title upon condition only that the whole payment shall be made; and the legal holder thereof shall obtain a patent therefor from the governor of the state, upon producing to the governor the certificate of the president and cashier of the Bank of the State of Alabama, certifying that the full amount of purchase-money mentioned in the said certificate has been paid.

Governor to issue patent on certificate of full payment.

§ 36. Before any sale of a sixteenth section shall be made, it shall be the duty of the school commissioners of said section to enter into bond and security to the governor of the state, and his successors in office, in such sum as the judge of the county court of the county wherein said section or the greater part thereof may lie, not exceeding fifteen thousand dollars, conditioned that they will faithfully perform the duties required of them by this act, so long as they continue to act as such commissioners.

Ib. Sec. 4. Before sale, commissioners required to enter into bond.

§ 37. It shall be the duty of said commissioners so soon as they have sold any of their sixteenth sections, or part thereof, under the provisions of this act, to make an entry in a book to be kept by them for that purpose, of all sales by them made, who the sale has been made to, and for what amount of money, what amount in notes, who are principals and securities, and then to make a return of said sale to the judge of the county court of the proper county, or to the clerk if there be no judge, who shall cause an entry thereof to be made in the office of the clerk of the county court; and the said commissioners shall also deliver to said judge or clerk, as the case may be, all the notes taken for the sale of said section or any part thereof, and take his receipt therefor; and said judge or clerk, as the case may be, shall forward the said notes to the president and directors of the Bank of the State of Alabama, who shall receive and collect the same as other debts according to common course of law between individuals, and a payment at any other place than to the president and directors of the Bank of the State of Alabama, shall not be deemed a good and valid payment.

Ib. Sec. 5. Commissioners to make entry of sales in a book, and make return of of sales, &c., with notes, to judge of county court.

Judge to forward notes to bank.

How collected.

§ 38. The school commissioners for the several sixteenth sections in this state which may be sold by virtue hereof, shall pay into the bank of the state, all moneys which they now have, or may hereafter receive belonging to said sections, which may not be needed to defray expenses of sale, and to pay contracts already entered into; and the officers of the bank shall open an account current in the books thereof with such commissioners, for all money received from or belonging in any way to their respective school fund, and the same shall, from the day of its reception in bank, bear an interest at the rate of six per centum, payable quarter-yearly, which interest may by the said commissioners be reinvested as principal, and shall again bear interest at the like rate, and payable also quarter-yearly; which interest shall by said bank be paid to said commissioners, quarter-yearly, on the demand of said commissioners, their agent or attorney, as the same may become due and payable, and which will be applied by said commissioners solely to the use of schools in the townships to which such sections properly belong; and the said commissioners shall not in any case diminish the capital stock of said township; and it shall be lawful for the president and directors of the bank of the state, at any time, to issue to the commissioners of any sixteenth section which may be sold and the moneys deposited in said bank, state stock which shall bear interest as herein above provided for, and the good faith and credit of the state are hereby and forever pledged for the payment of the interest and for the redemption of the principal stock so as aforesaid

Ib. Sec. 5. Commissioners to pay all school funds into bank, and bank to open an account therefor.

Interest payable quarterly, and may be reinvested as principal.

Bank may issue state stock.

Faith and credit of the state pledged.

issued, and also for all other moneys placed by said commissioners in the said bank.

Ib. Sec. 7. Provisions in favor of certain northern counties.

§ 39. The proceeds of the sales of the sixteenth sections in the counties of Jackson, Madison, Limestone, Lauderdale, Franklin, Lawrence, and Morgan, which may be deposited in the Bank of the State of Alabama, as hereinbefore provided for, shall be loaned to the inhabitants of the counties, wherein such sixteenth sections may be situated, whenever the same can be done, and moreover shall be subject to be retained by said counties, and invested in an office of discount and deposit or branch Bank of the State of Alabama, whenever such office or branch may be located in any of said counties, and shall form a part of the capital of such office or branch, and shall as above be loaned to the citizens of the counties in which such sections may be situated, and as near as can be ascertained, to the inhabitants of the townships electing to sell their sixteenth sections: *Provided*, Application is made by the inhabitants of such counties and townships within fifteen days from the commencement of each year.[1]

Ib. Sec. 8. In favor of other counties, and the southern section of the state.

§ 40. The proceeds of the sales of the sixteenth sections of the other counties in this state shall in like manner be loaned to the inhabitants of the respective counties wherein such sections may lie, and whenever the legislature may establish an office of discount and deposit, or branch of the Bank of the State of Alabama, in the southern section of this state, such part of the proceeds of the sales thereof, as the legislature may direct, shall in like manner form a part of the capital of such office or branch.[1]

Ib. Sec. 9. When elections may be held, on failure at the time designated. If lands cannot be sold, the minimum may be lowered.

§ 41. If from accident or other cause, an election shall not be holden by the inhabitants of any township on the second Monday in May, in pursuance of the provisions of the first section of this act, the commissioners of such section may cause such election to be holden on the second Monday in June, and each subsequent month; and if a sale cannot be effected at the minimum price of any sixteenth section, or part thereof, on the day appointed for sale by the commissioners of any section, they may again, on giving notice as hereinbefore provided, offer the same for sale at the expiration of each succeeding three months, and if on four attempts or offers to sell, no person will give the minimum price, the said commissioners may reduce the price if they think the interests of the inhabitants require it, and again offer the land for sale as above.

Ib. Sec. 10. Townships deficient in population.

§ 42. If any township having a sixteenth section of value, may not have five inhabitants who would be qualified electors, then any two freeholders or householders thereof may perform the duties required of the school commissioners by this act.

1829—(13) *Sec.* 1.

a The preceding act. Commissioners may rent 16th sections until sale is effected.

§ 43. Nothing contained in the act, passed the fifteenth of January, one thousand eight hundred and twenty-eight, "to authorize the sales of the sixteenth sections, and for other purposes,"[a] shall be so construed as to prevent the commissioners elected or appointed in each township, from renting the same annually, until a sale can be effected at the minimum price; and the person renting the same shall not be interrupted in his possession until his contract expires.

Ib. Sec. 2. When no money has been received, commissioners may require purchasers to pay a per centum on sales.

§ 44. When any sixteenth section shall have been sold, agreeably to the provisions of an act, to which this is an amendment, and no money shall have been received by the commissioners, or a sum not sufficient to defray the expenses incident to such sale, it shall be competent for the commissioners to require the purchaser or purchasers to pay a per centum on the amount of sales, which per centum shall not, in the aggregate, exceed the expenses incurred.

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[1] The act of 1832, directs the transfer of the notes, &c. to the appropriate branches.—See § 57.

§ 45. The per centum hereby authorized, shall be paid at the time of sale by the purchaser, and shall be deducted from the original amount of the purchase-money.

Ib. Sec. 3. Per cent. paid, to be deducted.

§ 46. If any person or persons who may have leased or rented any sixteenth section from the commissioners thereof, or any person or persons who may have rented or leased from such lessor, shall hold over after the expiration of his or their term, he or they shall be guilty of an unlawful detainer, and may be proceeded against accordingly by the person or persons entitled to the possession thereof: *Provided,* The person or persons entitled to possession shall have made a demand in writing of the possession of said land, at least ten days previous to the commencement of his action.

Ib. Sec. 4. Holding over after the expiration of lease, forcible detainer.

§ 47. All the powers given by said act to the commissioners to dispose of the sixteenth sections, are hereby extended under the provisions of said act.

Ib. Sec. 5. Powers of commissioners.

§ 48. Whenever a sale of a sixteenth section, or any part thereof, has been, or may hereafter be effected pursuant to the provisions of an act passed the fifteenth day of January, eighteen hundred and twenty-eight, entitled "An Act to authorize the sales of the sixteenth sections, and for other purposes,"[a] it shall be lawful for the commissioners to retain out of the first moneys which shall come into their hands, either for rents due the township, or for interest accruing on the purchase-money of the sixteenth section, all expenses which they may have incurred in causing said section to be surveyed and laid out into lots, pursuant to the provisions of the before recited act: *Provided,* That the commissioners or one of them, shall make affidavit before the judge of the county court, or some justice of the peace of the county where such section is situated, that such expenses were necessary and have actually been incurred, which affidavit so taken shall be filed in the office of the county court.

1830—(13) *Sec.* 8.

[a] *See* § 33 *to* 42.

Commissioners may retain amount of expenses, out of proceeds of sale, provided they make oath, &c.

§ 49. The school commissioners of the several sixteenth sections may at any time whenever they may think proper, hold an election at their respective sixteenth sections to ascertain the sense of the qualified electors in their townships in relation to the sale or no sale of any such section, after having given at least thirty days' notice of said election, by advertisement at six of the most public places in such township; and all elections under the provisions of this act, shall be conducted under the same rules, regulations, and restrictions as are imposed by the act to which this is an amendment.[b]

Ib. Sec. 2. Commissioners may hold an election for sale of section at any time. How conducted.

[b] *See* § 33, *&c.*

§ 50. Whenever a sixteenth section may have been sold, and the commissioners thereof have received no money from the sale, and have forwarded the notes to the bank in pursuance of law, it shall be the duty of the cashier of said bank to pay any expenses for surveying and selling out said section, out of the proceeds of the first money received from the sales thereof, upon the account for such expenses in surveying and selling being fairly made out and certified by the whole of the commissioners of said section, to be just and unpaid, and that they have no funds of said section wherewith to pay said account.

Ib. Sec. 3. Cashier to pay expenses of surveying, &c., when commissioners have no funds.

§ 51. It shall be the duty of the commissioners of the sixteenth sections, acting under the above recited act,[c] annually to report to the judge of the county court of their proper county, the amounts of money received and on hand, the amount disposed of, and to what purposes, together with such other matters in relation to their duties as they may deem necessary, or the judge may require; which report

1832—(10) *Sec.* 1.

[c] *See* § 33, *&c.*

Commissioners to report to judge of county court, amount of money on hand, &c.

Report to be filed and recorded. shall be filed in the county clerk's office, and be by him duly recorded in a book to be kept for that purpose.

Ib. Sec. 2. Money accruing from rent, not to be paid into bank. § 52. When the citizens in any township have elected to sell the sixteenth section, and partial sales only have been effected, the commissioners shall not be required to pay over to the bank, any sum or sums of money which may accrue from the rent or rents of such tracts as have remained unsold, but the same shall be disposed of in the manner prescribed by law in cases where the sixteenth section has not been offered for sale.

Ib. Sec. 3. Commissioners may be compelled to report by notice and attachment. § 53. Should the commissioners of any sixteenth section, fail or refuse to report to the judge according to the provisions of the first section of this act, on or before the first Monday in April in each year, it shall be the duty of the judge to notify them in writing to appear before him at such time as he shall therein designate, to file said report; and should the said commissioners fail or refuse to obey the requisitions of such notice, the said judge shall in that case have power to cause them or either of them, to be brought before him by attachment, as in other cases for contempt.

Ib. Sec. 4. Assignees entitled to patents; § 54. And whereas, doubts are entertained whether assignees of the purchasers of sixteenth section lands, are entitled to patents in their own names on full payment being made therefor, for remedy whereof, *Be it enacted*, That the assignee or assignees of any certificate of purchase of any sixteenth section lands, whether heretofore or hereafter made, shall be entitled to a patent for the same in his, her, or their own names, in the same manner that original purchasers are: but assignment must be acknowledged before a justice of the peace. *Provided*, That every such assignment shall be acknowledged before some justice of the peace, and certified by him.

Ib. Sec. 5. Commissioners of 16th section, T. 6, R. 9. in Conecuh, to divide the fund equally among all scholars. a See § 26. § 55. The school commissioners of the sixteenth section of township six and range nine, in the county of Conecuh, are hereby required to divide the fund arising from the interest on the fund arising from the sale of said sixteenth section, equally amongst all the scholars who may go to school in said township, whether they go to a sixteenth section school or not, to be paid and allowed to the parents or guardians of such scholars, on the certificate of the teacher to whom they may respectively be sent.[a]

Ib. Sec. 6. Fund, how applied when there is no school in the township. § 56. Where there is no school situated in any township, or where there may not be scholars enough to constitute a school in any township, it shall be the duty of the school commissioners of such township to apply the interest arising from the sale, or the moneys arising from the rent of their sixteenth section, annually, to the education of the scholars of such township in equal proportion, at any other school not situated in such township, which shall be paid to the parent or guardian, upon the certificate of the teacher of such child or children.

1832—(25) Sec. 1. Cashier of the state bank to transfer certain notes to the branches at Montgomery and in the Tennessee valley. § 57. The cashier of the Bank of the State of Alabama is hereby required to transfer all notes, bonds, and moneys that may be in said bank, arising from the sale of sixteenth sections in the counties of Montgomery, Lowndes, Autauga, Henry, Pike, Covington, Dale, Dallas, Conecuh and Butler, to the branch Bank of the State of Alabama, at Montgomery: And also, all notes, bonds or moneys now deposited in the Bank of the State of Alabama, that have accrued or may hereafter accrue from the sale of the sixteenth sections in the counties of Jackson, Madison, Limestone, Morgan, Lawrence, Franklin and Lauderdale; and also all the cash, bonds and notes arising or that may hereafter arise from the sale of the 400,000 acres of land granted this state for the improvement of the Tennessee river, shall be in like manner transferred to the branch of the Bank of the State of Alabama in the Tennessee Valley, as soon thereafter as said bank commences business.

§ 58. The certificate of the cashier of said branch bank, shall be valid to all intents and purposes, as though it were made by the cashier of the Bank of the State of Alabama.

Ib. Sec. 2.
Certificates of cashier of branch bank to be valid.

§ 59. The funds arising from the sale of the sixteenth sections deposited in the branch Bank of the State of Alabama, located at Montgomery, shall be loaned to the citizens of the several townships from which they may have arisen, and shall be retained for that purpose, until the fifteenth day of February, in each year.

1833—(38)
Sec. 1.
16th section funds deposited in branch bank at Montgomery, how loaned.

§ 60. After the fifteenth day of February, in each year, the directors of said branch bank shall dispose of the above named funds as the other funds of the bank.

Ib. Sec. 2.

§ 61. Whenever full payment shall have been made for any sixteenth section, the whole net profits made on the funds thereby created, after such payment, shall be paid over to the commissioners of such sixteenth section, in the same manner that the six per cent. on said fund is now required to be paid over, and shall be by said commissioners appropriated in the same manner, as the said six per cent. is now required to be appropriated:[a] *Provided however*, That if the said profits shall at any time be less than six per cent., six per cent. shall be paid as now provided for by law.

1833—(32)
Sec. 1.
16th section funds disposed of, when full payment is made.

[a] See § 38.

§ 62. Every purchaser, or his executors or administrators, of any parcel or lot of the sixteenth sections of this state, having lost or mislaid his certificate of purchase, shall, upon making affidavit of such loss before any judge or justice of the peace of the county, in which the lot or parcel of land purchased is situate, have a duplicate certificate granted unto him, by the school commissioners of the sixteenth section in which his lot or parcel of land is situate, of the same tenor and effect with the original certificate of purchase: and such duplicate, certified, shall have the same force and effect as the original certificate of purchase.

1833—(34)
Sec. 1.
Lost certificates may be renewed.

SEAL OF THE STATE.

§ 1. There shall be a seal of this state, which shall be kept by the governor, and used by him officially; and the present seal of the territory shall be the seal of the state, until otherwise directed by the general assembly.

Con. Ala.
Art. 4.
Sec. 12.
Territorial seal adopted.

SECRETARY OF STATE.

§ 1. There shall be a secretary of state appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the general assembly; and shall perform such other duties as may be required of him by law.

Con. Ala.
Art. 4.
Sec. 14.
Secretary's appointment and duties.

§ 2. The secretary of the territory for the time being shall keep the public records and documents belonging to his office, at the place designated by law for the sitting of the general assembly.

1807—(28)
Sec. 1.
Secretary of territory to keep records at seat of government.

Ib. Sec. 2. Persons detaining public records, subject to a forfeiture of $3000.

§ 3. If any person or persons possessed of any of the records and public documents belonging, or in any manner appertaining to the government of this territory, which by the laws of the United States, and ordinance for the government of this territory, they may not have a right to retain, shall, on the application of the governor of this territory, who is hereby authorized to demand and receive the same, refuse to deliver such records and public documents, the person or persons so refusing shall forfeit and pay the sum of three thousand dollars.

Ib. Sec. 3. Attorney-general to prosecute such offenders.

§ 4. It shall be the duty of the attorney-general of this territory, and he is hereby required, to prosecute and recover, in the name of the governor for the time being, for the use of the territory, all such sums as may become forfeited under this act.

1819—(9) Sec. 4. Secretary of state to perform the duties of territorial secretary.

§ 5. The secretary of state shall, in addition to the duties prescribed by the constitution of this state, perform all the duties heretofore appertaining to the office of territorial secretary, and shall be entitled to receive, in addition to the salary established by law, the compensation allowed for copying the laws and superintending the printing thereof: and also the sum of one dollar for every certificate and the annexation of the seal of the state thereto, which may be required by any person or persons, to any instrument, relating to contracts or other matters of private concern, to be paid by the party applying for the same.

Fees.

SECURITIES.

1814—(8) Security in replevin bond may require collateral security, on the principal's removing himself, &c. If not given, security may take out execution.

§ 1. In case the security to any replevin bond shall become dissatisfied in consequence of the principal to said bond being about to remove out of the territory, or shall be about to remove his or her property out of the county, or be wasting the same, such security, his agent, or attorney, making oath thereof before any justice of the county in which the principal to said bond resides, shall have a right to demand collateral security; and in case the principal shall fail to give the same, within five days after notice of such oath having been made, to be approved of by the clerk of the proper court or justice of the peace, as the case may be, the security, his agent, or attorney, shall have power to take out execution on such bond in favor of the plaintiff in such action, and it shall be the duty of the sheriff, or constable, as the case may be, to execute the same according to law: *Provided*, The defendant in execution may at any time previously to the day of sale enter the collateral security required, with the clerk of the court of the county from which such execution emanated, or justice of the peace, upon payment of all costs that may have accrued, and further proceedings thereon shall be stayed, until the original stay expires.

Security may be entered between execution and sale.

All bonds under this act, to have the force of judgments.

§ 2. Every bond taken in virtue of this act from the principal obligor to any replevin bond with collateral security shall, when due, have the force and effect of a judgment, and execution may issue as well against such collateral security as against such obligor and his first security, for the moneys mentioned in such replevin bond, and the costs that may accrue in giving the collateral security required.

1821—(26) Sec. 1. Securities paying money on judgment, execution, &c. may

§ 3. In all cases where judgment shall be entered up in any court of record, or by any justice of the peace, against any person or persons as security or securities, their executors or administrators, upon any note, bill, bond, or obligation, and in all cases where execution shall be awarded by or issued from any of the courts of record, or any justice of the peace against any person or persons as security or securities, his, her, or their heirs, executors, or administrators, upon any bond, obligation, or recognizance, and the amount of such judgment or obligation, or any part thereof, hath been paid or discharged by such security or securities, his, her, or their heirs, executors, or administrators, it shall be lawful for such security or securities, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against such principal obligor or obligors, recognizor or recognizors, his, her, or their heirs, executors, or administrators, in any court, or before any justice of the peace, where such judgment may have been entered up, and execution awarded against such security or securities, his, her, or their heirs, executors, or administrators, for the full amount which shall have been paid, with interest thereon from the time the same shall have been paid and satisfied, until such judgment shall be discharged.

have judgment against the principal by motion.

Interest allowed.

§ 4. When the principal obligor or obligors, recognizor or recognizors, shall become insolvent, and there shall be two or more securities jointly bound with the said principal obligor or obligors, recognizor or recognizors, in any bond, bill, note, recognizance, or other obligation for the payment of money or other thing, and judgment shall be obtained, and execution awarded and issued against one or more of such securities, or his or their legal representatives, it shall be lawful for the court, or justice of the peace, before whom judgment and execution shall be obtained, upon motion of the party or parties, his or their legal representatives, against whom judgment hath been entered up and execution awarded and issued, as securities aforesaid, to grant judgment and award execution against all and each of the obligors and recognizors, and their legal representatives, for their and each of their respective shares and proportions of the said debt or damages.

Ib. Sec. 2.
Security may have judgment on motion against co-security for his proportion of the debt.

§ 5. No security or securities, his, her, or their executors or administrators, shall be suffered to confess judgment, or suffer judgment to go by default, so as to distress his, her, or their principal or principals, if such principal or principals will enter him, her, or themselves as defendant or defendants to the suit, and tender to the said security or securities, his, her, or their executors or administrators, other good and sufficient collateral security, to be approved of by the court before whom the suit shall be depending.

Ib. Sec. 3.
Securities not to confess judgment, &c. if principal will tender collateral security.

§ 6. When any person or persons shall become bound as security or securities by bond, bill, or note, for the payment of money or any other article, and shall apprehend that his or their principal or principals is or are likely to become insolvent, or to migrate from this state without previously discharging any such bond, bill, or note, it shall be lawful for such security or securities in every such case, (provided an action shall have accrued on such bond, bill, or note,) to require, by notice in writing, of his or their creditor or creditors, forthwith to put the bond, bill or note, by which he or they may be bound as security or securities, as aforesaid, in suit; and unless the creditor or creditors so required to put such bond, bill, or note in suit, shall in a reasonable time commence an action on such bond, bill, or note, and proceed with due diligence in the ordinary course of law, to recover judgment for, and by execution to make the amount due by such bond, bill, or note, the creditor or creditors, so failing to comply with the requisition of such security or securities, shall thereby forfeit the right which he or they otherwise would have had, to demand and receive of such security or securities, the amount which may be due by such bond, bill, or note.

Ib. Sec. 5.
Securities may require principal to be sued, by giving a written notice.

Creditors failing, security discharged.

§ 7. Any security or securities, his or their executors or administrators, may in like manner, and for the same cause, make such re-

Ib. Sec. 6.
Benefit of the act extended to executors, &c.

quisition of the executors or administrators of the creditor or creditors; and in case of the failure of the executors or administrators to proceed, such requisition as aforesaid being duly made, the security or securities, his, her, or their executors or administrators making the same, shall have the same relief that is hereinbefore provided for a security or securities, where his or their creditor or creditors shall be guilty of a similar failure; *Provided*, That nothing in the two last sections contained, shall be so construed as to affect bonds with collateral conditions, or the bonds that may be entered into by guardians, executors, administrators, or public officers: *And provided also*, That the rights and remedies of any creditor or creditors, against any principal debtor or debtors, shall be in nowise affected thereby.

Not to affect bonds with collateral conditions, &c. nor creditors' rights against principal debtor.

1828—(27) *Sec.* 1. Security sued, may notify principal, and obtain judgment, in same manner as though he had paid the debt.

§ 8. In all suits against any person or persons as security on any bill, note, bond, covenant, or other instrument in writing whatsoever, for the payment of money or property, or the performance of any duty, it shall be lawful for such person or persons being such security, to notify his, her, or their principal or principals, (as the case may be,) of the pendency of the suit; and it shall be the duty of the court or justice of the peace before whom the suit is to be tried, on proof being made at the trial that notice has been given to the principal or principals, and that the party or parties sued, is the security of said principal or principals, to enter judgment against the principal or principals in favor of the security, for the full amount of the judgment and costs which shall have been recovered against his, her, or their security; upon which judgment, the party or parties being security, shall have execution against his, her, or their principal or principals, in the same manner as if the debt had been paid by such security.

1830—(16) *Sec.* 1. Bank securities on notes paying after protest, to have the same process as the bank, against the principal. [a 1833—(18) *Sec.* 1.]

§ 9. If any person or persons who may have executed any note or notes payable to the president and directors of the Bank of the State of Alabama, [a]or any of the branches thereof, as security or securities, shall pay the same after it shall have been protested for nonpayment, such security or securities shall have the same summary remedy against the principal in such note as is now provided by law in favor of said bank, for the recovery of any sum or sums so paid by such security or securities, and costs of protest; and the certificate of the president of said bank, of the payment so made by such security or securities, shall be sufficient evidence of such payment.

Ib. Sec. 2. Endorsers of bills entitled to similar remedy against drawer, &c. [b 1833—(18) *Sec.* 1.]

§ 10. If any person or persons who may be bound for the payment of any bill of exchange, the property of the Bank of the State of Alabama, [b]or any of the branches thereof, shall pay the same after it shall have been protested for nonpayment, the person or persons so paying such bill, shall have the same summary remedy against the drawer, acceptor, or any previous endorser of such bill or any one of them, as is provided by the first section of this act in favor of the securities of notes against the principals, for the sum paid on such bill, and all costs and damages occasioned by protest; and the certificate of the president of said bank, of the payment of any such bill by any such person or persons, shall be sufficient evidence of such payment.

Ib. Sec. 3. Remedy where the bank is located, or where defendant resides.

§ 11. The remedy by this act provided, shall be had in any court having competent jurisdiction, either in the county where the said bank may be located, or in the county of the residence of the defendant or defendants, or either of them.

NOTE.—How securities may compel the sheriff, &c. to levy on property of principal first,—See "Executions,"—§ 24.

Securities of Officers.

§ 12. It shall be the duty of the judge of the county court, whenever application shall be made to him by the security or securities, or either of them, of any clerk or sheriff, or other officer of any county in this state, to issue a citation to the said clerk, sheriff, or other officer to appear before him on some day therein named, not less than ten, nor more than fifteen days, then and there to enter into a new bond, with good and sufficient securities, for the faithful execution of the duties of his office.

1822—(30) *Sec.* 1. On application of securities of officer, judge of county court may require new bond.

§ 13. Upon the execution of such new bond by the said clerk, sheriff, or other officer, the security or securities making application, shall be discharged from the obligation of the bond previously entered into by them: *Provided*, That nothing herein contained shall discharge the security or securities from any liability which they had before that time incurred.

Ib. Sec. 2. New bond being given, securities discharged. Proviso.

§ 14. If any clerk, sheriff, or other officer, being duly served with a citation as aforesaid, shall fail or refuse to give the bond required as aforesaid, it shall be the duty of the judge of the county court to decree the office of the said clerk, sheriff, or other officer, to be vacated; and shall cause an entry thereof to be made upon the records of the county court; and such vacancies shall be filled as now prescribed by law.

Ib. Sec. 3. On officer's refusal, judge to declare the office vacated.

§ 15. It shall be the duty of any judge of the circuit court, whenever application shall be made to him by the security or securities, or either of them, of any judge of the county court of any county in this state, to issue a citation to the said judge of the county court to appear before him on some day therein named, not less than ten nor more than thirty days, then and there to enter into a new bond, with good and sufficient securities, for the faithful execution of the duties of his office.

1824—(31) *Sec.* 1. Securities of judge of county court may apply to circuit judge for a citation against him.

§ 16. Upon the execution of such new bond by the judge of any county court, the security or securities, making application, shall be discharged from the obligation of the bond previously entered into by them: *Provided*, That nothing herein contained shall discharge the security or securities from any liability which they had before that time incurred.

Ib. Sec. 2. Former securities discharged.

§ 17. If any judge of the county court, being duly served with a citation as aforesaid, shall fail or refuse to give the bond as required by this act, it shall be the duty of the judge of the circuit court to certify the same to the governor, which shall be evidence of a vacancy, and the same shall be filled as now prescribed by law.

Ib. Sec. 3. On failure to give bond, circuit judge to certify vacancy to the governor.

Note.—For the time within which suits must be instituted against the securities of public officers; See "Judicial Proceedings at Common Law—Limitation."

SHERIFFS.

§ 1. A **sheriff** shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor as

Con. Ala. Art. 4. Sec. 24. How elected; term of service; qualification.

Vacancies, how filled.

in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years. (1)

1807—(30) *Sec.* 1. Duties and powers of sheriff.

§ 2. The duties of a sheriff shall be, to keep the peace, by causing all offenders against law, in his view, to enter into recognizances, with sureties, for keeping the peace, and appearing at the next circuit or superior court, to be holden in the same county, and to commit, in case of refusal; which recognizances shall, by the said sheriff, be returned and certified before the said court. It shall also be his duty to quell and suppress all affrays, routs, riots, and insurrections: for which end, he is hereby empowered to call to his aid the power of the county. He shall pursue, apprehend, and commit to jail, all felons and traitors: he shall execute all warrants, writs, and other process, which by law shall appertain to the duties of his office, and which shall be directed to him by legal authority. He shall duly attend upon all the courts of record, at their respective terms, or sessions, in his county.

1819—(6) *Sec.* 10. Sheriff of circuit and supreme court.

§ 3. The sheriffs of the different counties shall be sheriffs of the circuit courts within their respective counties; and the sheriff of the county, in which the supreme court shall be holden, shall also be sheriff of the said supreme court.

1822—(13) *Sec.* 4. Sheriffs to give bond.

[a 1807—(30) *Sec.* 1.]

§ 4. All sheriffs elected or appointed under the constitution of this state, shall, before entering on the duties of their office, give bond, with such number of good and sufficient securities, as may be approved of by the county courts respectively, in such sum as they may deem necessary and proper, [a]not less than four thousand dollars, payable to the governor for the time being, and his successors in office, which bond shall be taken by said court, and deposited in the clerk's office:[1] *Provided,* That it shall be the duty of the sheriff to renew his bond annually, if required by the county court.

Ib. Sec. 5. Failing, his office vacated.

§ 5. Any sheriff failing or neglecting to comply with the provisions of the preceding section, shall vacate his office, and said office is hereby declared vacated; and such vacancies, should any such occur, shall be filled in such manner as is now prescribed by the constitution, for supplying vacancies for sheriffs. (2)

1822—(22) *Sec.* 1. When an election for sheriff has not been held at the proper time, governor to issue writ of election. Thirty days' notice to be given.

§ 6. When the officer whose duty it is to hold an election for sheriff in any county, shall fail to do the same at the time prescribed by law, it shall be the duty of the governor, or the person exercising the duties of his office, to issue his writ of election, directed to any person residing in the county whom he may appoint, directing the person to hold an election for the purpose of electing a sheriff for the county, at the place or places prescribed by law for holding elections for representatives for the county, at any time he may appoint; requiring at least thirty days' notice to be given by advertisement posted up at four of the most public places in the county, of the time of holding said election.

Ib. Sec. 2. Polls to be kept open agreeably to law.

§ 7. At the election hereby authorized to be held, the polls shall be opened, and kept open, agreeably to the law now regulating elections in the county in which it shall be held.

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[1] See "County Officers,"—§ 12 to 16.

(1) A sheriff has no authority to give a casting vote between two candidates for sheriff. When two candidates for sheriff obtain an equal number of votes, there is no election, and the vacancy may be filled by executive appointment, until the next general election. The State *v.* Adams, 2 *Stewt. Rep.* 231.

(2) Statutes in relation to sheriff's liabilities and bonds construed. McWhorter et al. *v.* McGehee, 1 *Stewt. Rep.* 546.

§ 8. The clerks and judges who shall superintend the election hereby authorized, shall be appointed by the person to whom the commission shall be directed, who shall be authorized to administer the oaths to said clerks and judges, as are required to be administered to clerks and judges at the general elections.

Ib. Sec. 3. Clerks and judges of the elections.

§ 9. The person who shall be returned duly elected, by the person to whom the writ of election is directed, shall be commissioned as sheriff by the governor, or the person exercising the duties of his office.

Ib. Sec. 4. Person elected to be commissioned by governor.

§ 10. Whenever the office of sheriff, in any county, shall become vacant, it shall be lawful for the coroner of said county to perform all the duties imposed by law upon the sheriffs of the several counties, under all the penalties and liabilities created by law for a violation or neglect of duty by the several sheriffs.

1826—(17) *Sec.* 5. Sheriff's office vacant, coroner may perform the duties.

§ 11. Whenever judgment shall be rendered by any court of this state against any sheriff for any failure, neglect of duty, or misconduct in office, and it shall appear to the satisfaction of the court that such failure, neglect of duty, or misconduct in office, is the failure, neglect, or misconduct of his deputy, it shall be the duty of the court, on motion of the sheriff, to render judgment against such deputy and securities in favor of the principal sheriff, for the whole amount of the judgment and costs rendered by the court against such principal sheriff, by reason of such failure, neglect of duty, or misconduct, of said deputy; for which execution may issue as in other cases: *Provided,* That the deputy, or his security or securities, shall have one day's notice of the pendency of the proceedings against the principal sheriff.

1828—(46) *Sec.* 1. When judgment is rendered against a sheriff for the default of his deputy, he may have judgment against such deputy and his securities on motion.

SHIPS, AND SEAMEN.

§ 1. If any seaman or mariner who shall have signed a contract to perform a voyage in any ship or vessel, shall at any place within this state, desert or absent himself from such ship or vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace, upon complaint under oath, to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall appear by due proof that he has signed a contract to perform a voyage as aforesaid, and that such voyage is not finished, altered, or the contract otherwise dissolved, and that such seaman has deserted the vessel, or absented himself without leave, the said justice shall commit him to the house of correction, or common jail, there to remain until the said vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, the master paying all costs and expenses.

1823—(34) Seamen deserting, may be committed by justice of the peace, until the vessel is ready to proceed on her voyage, or they are discharged by the master.

§ 2. If a person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof, before a justice of the peace, shall forfeit and pay ten dollars for every day which he, she, or they shall continue so to harbor or secrete such seaman or mariner, to be sued for in the name of the state to the use of the person prosecuting for the same.

Persons harboring seamen, liable to forfeiture of $10 per day.

§ 3. Every constable who may apprehend any seaman or mariner who has deserted or left his vessel as aforesaid, shall receive the sum of five dollars as his fees for such apprehension.

Constable allowed $5 for apprehending seamen.

§ 4. No master of any vessel within this state shall hire, receive, or ship any seaman, or person belonging to, and pretending to be discharged from any other vessel, unless such seaman or person shall

Masters of vessels not to employ or receive seamen

Without certificate of discharge.

Penalty, and how appropriated.

have a certificate of his discharge, signed by the master or officer commanding such vessel, or shall produce other satisfactory testimony of his discharge to some justice of the peace, whose certificate shall be received in lieu thereof; and any person who may contravene the provisions of this act, shall forfeit and pay the sum of fifty dollars, to be recovered in any court having jurisdiction thereof, one half to the use of the informer, and the other half to the use of the poor of the county in which suit may be instituted.

1824—(34) *Sec.* 1. Ships, and other enrolled vessels, liable for certain debts contracted by their owners, &c.

§ 5. All ships, vessels, steamboats, and other registered, enrolled, or licensed craft, built, repaired, fitted, or furnished within this state, are hereby declared to be liable and chargeable for all debts contracted by the owners, masters, or consignees thereof, for or by reason of any work done, or materials or supplies found, provided, or furnished by any merchant, trader, ship-builder, mechanic, or workman, for, upon, or concerning the building, repairing, fitting, furnishing, supplying or equipping such ship, vessel, steamboat, or other craft, in preference to any other debts due and owing from the owners thereof.

Ib. Sec. 2. Creditor may file process in the nature of a libel.

§ 6. It shall be lawful for all and every of the said merchants, traders, ship-builders, mechanics, and workmen, to file process in the nature of a libel in admiralty proceedings, in the circuit and county courts in this state, against such ship, vessel, steam-boat, or other craft, her tackle, apparel, and furniture; whereupon process shall issue, and such proceedings shall be had towards the recovery of such debts as are usually had in the courts of admiralty for the recovery of mariners' wages, and other debts actually contracted upon the high seas.

Ib. Sec. 3. Different creditors may sue jointly, and the court may consolidate all suits separately brought.

§ 7. All or any of the said merchants, traders, ship-builders, mechanics, or workmen, to whom such ship, vessel, steam-boat, or other craft may be indebted, may join in one suit for the recovery of all their debts; and if more than one such be brought, the court may consolidate the same into one, and give one definitive judgment and decree, comprehending all such debts as shall be demanded by all or any of the merchants, traders, ship-builders, mechanics, or workmen as aforesaid, and duly supported either by the process in nature of a libel as aforesaid, or by petition to the court, while one or more of such suits shall be pending.

Ib. Sec. 4. Owner may release vessel by giving security.

§ 8. If on the issuing of process, or filing of such petition as aforesaid, the master or owner of such ship, vessel, steamboat, or other craft, or his or their agents or attorneys, shall enter into stipulation or bond, with sufficient securities to answer all the demands aforesaid, which shall be filed against such ship, vessel, steamboat, or other craft, the same shall be released and discharged from such lien.

Ib. Sec. 5. Lien to continue only till first voyage.

§ 9. No ship, vessel, steamboat, or other craft shall continue to be liable for such debts, to the merchants, traders, ship-builders, mechanics, and workmen as aforesaid, longer than the time which shall intervene between the contracting of such debts, and the time of her proceeding on her voyage, next after such debts may be contracted.

Ib. Sec. 6. Issues may be tried by a jury. Power of clerks of courts.

§ 10. All issues, at the request of either party, shall be tried by a jury; and all such issues shall be made up by the parties under the direction of the court; and in vacation, the clerks of the aforesaid courts shall have and exercise the same powers as clerks of the district and circuit court of the United States, are vested with by the acts of congress in suits and libels, for the recovery of mariners' wages, and other debts actually contracted on the high seas; and shall proceed in the same manner. And the said clerks shall take the bonds, or stipulations as aforesaid, which bonds or stipulations shall not be void for want of form, but shall be proceeded on, and recovered, according to the plain intent and meaning thereof: *Provided*, That nothing

Bonds not void for want of form.

in this act contained, shall be construed to extend to any keel-boat or barge engaged in the navigation of the Mobile, Alabama, or Tombeckbee rivers, or their tributaries.

This act not to include barges, on certain rivers.

SLAVES, AND FREE PERSONS OF COLOR.

Con. Ala. Art. 6. (Slaves.) *Sec.* 1.

§ 1. THE general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: *Provided*, That such person or slave be the *bona fide* property of such emigrants: *And provided also*, That laws may be passed to prohibit the introduction into this state of slaves who have committed high crimes in other states or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

Powers of the general assembly in relation to slaves.

§ 2. In the prosecution of slaves for crimes of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 2. Trial for crimes.

§ 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

Sec. 3. Dismembering or killing slave.

§ 4. No slave shall be admitted a witness against any person, in any matter, cause, or thing whatsoever, civil or criminal, except in criminal cases, in which the evidence of one slave shall be admitted for or against another slave.

1805—(4) *Sec.* 1. Slave not to be a witness except in trial of slave.

§ 5. No slave shall go from the tenement of his master or other person with whom he lives, without a pass, or some letter or token, whereby it may appear that he is proceeding by authority from his master, employer, or overseer; if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, to be by his order punished with stripes, or not at his discretion, not exceeding twenty stripes.

Ib. Sec. 2. Slaves not to go from home without a pass,

§ 6. If any slave shall presume to come and be upon the plantation of any person whatsoever, without leave in writing from his or her owner or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give or order such slave ten lashes on his or her bare back, for every such offence.

Ib. Sec. 3. nor upon the plantation of any person without leave in writing.

§ 7. No slave shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive, except the tools given him to work with, unless he is ordered by his master, mistress, or overseer, to carry the said articles from one place to another; but all and every gun, weapon, or ammunition, found in the possession or custody of any slave, may be seized by any person, and upon due

Ib. Sec. 4. Slaves not to carry weapons, offensive or defensive.

Weapons forfeited to the seizer thereof.

proof made thereof, before any justice of the peace of the county or corporation where such seizure shall be made, shall, by his order, be forfeited to the seizer, to his own use; and moreover, every such offender shall receive, by order of such justice, any number of lashes not exceeding thirty-nine, on his bare back, for every such offence: *Provided*, That any justice of the peace may grant, in his proper county, permission in writing to any slave, on application of his master or overseer, to carry and use a gun and ammunition within the limits of his said master's or owner's plantation, for a term not exceeding one year, and revocable at any time within such term, at the discretion of said justice.

May be licensed to carry gun within their owner's farm, with owner's consent.

Ib. Sec. 5. Penalty on persons permitting slaves, not their own, to remain on their plantations.

§ 8. And to prevent the inconveniences arising from the meeting of slaves, *Be it enacted*, That if any master, mistress, or overseer of a family shall knowingly permit or suffer any slave not belonging to him or her, to be and remain in or about his or her house or kitchen, or upon his or her plantation, above four hours at any one time, without leave of the owner or overseer of such slave, he or she so permitting, shall forfeit and pay ten dollars for every such offence; and every owner or overseer of a plantation, who shall so permit or suffer more than five negroes or slaves, other than his or her own, to remain upon his or her plantation or quarter at any one time, shall forfeit and pay ten dollars for each negro or slave above that number, which said several forfeitures shall be to the informer, and recoverable with costs, before any justice of the peace of the county or corporation where such offence shall be committed: *Provided*, That nothing herein contained shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting with their owner's or overseer's leave, upon any plantation to such owner belonging, nor to restrain the meeting of slaves, on their owner's or overseer's business, at any public mill; nor to prohibit their meeting on any other lawful occasion, by license in writing from their owner or overseer, nor their going to church, and attending divine service on the Lord's day, and between sunrising and sunsetting.

Ib. Sec. 6. Riots, &c., by slaves, punished with stripes.

§ 9. Riots, routs, unlawful assemblies, trespasses, and seditious speeches, by a slave or slaves, shall be punished with stripes, not exceeding thirty-nine, at the discretion of a justice of the peace; and he who will, may apprehend and carry him, her, or them, before such justice.

Ib. Sec. 7. Penalty on white person for attending unlawful meeting, or harboring slave.

§ 10. If any white person, free negro or mulatto, shall at any time be found in company with slaves, at any unlawful meeting, such person being thereof convicted before any justice of the peace, shall forfeit and pay twenty dollars for every such offence, to the informer, recoverable with costs before such justice.

Ib. Sec. 8. Powers of justices of the peace in case of such unlawful meetings.

§ 11. Every justice of the peace, upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before him, or some other justice of his county or corporation, to be dealt with as this act directs; and every justice failing herein, shall forfeit and pay ten dollars for every such failure; and every sheriff or other officer, who shall fail, upon knowledge or information of such meeting, to endeavor to suppress the same, and bring the offenders before some justice of the peace to receive due punishment, shall be liable to the like penalty of ten dollars; both which penalties shall be to the informer, and recoverable with costs, by action of debt, in any county or corporation court; and every under-sheriff, or constable who, upon knowledge or information of such meeting, shall fail to perform his duty in suppress-

Penalty on sheriffs and other officers for not endeavoring to suppress unlawful meetings.

ing the same, and apprehending the persons so assembled, shall forfeit and pay ten dollars for every such failure, to the informer, recoverable with costs, before any justice of the county or corporation wherein such failure shall be.

§ 12. No person whatsoever shall buy, sell, or receive, of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master, owner, or overseer of such slave, expressive of the articles so permitted to be bought, sold, or bartered. And if any person shall presume to deal with any slave, without such leave or consent, he or she so offending, shall forfeit and pay to the master or owner of such slave, four times the value of the thing so bought, sold, or received, to be recovered with costs by action upon the case, in any court having cognizance of the same, and shall also forfeit and pay the further sum of twenty dollars, to any person who will sue for the same, with costs before any justice of the peace; or on failure or refusal so to pay, shall, by order of such justice, be committed to prison, until he or she make such payment; and any slave offering to sell any article, without leave in writing from his master or owner, shall receive ten lashes, by order of any justice of the peace before whom he or she is convicted.

Ib. Sec. 9. Trading with slaves prohibited.

Penalty.

Punishment of slave for offering to sell, &c.

§ 13. If any master or owner of a slave, shall license such slave to go at large and trade as a freeman, the master or owner shall forfeit and pay the sum of fifty dollars, one moiety to the use of any person suing for the same, and the other moiety to the use of the territory; and if after conviction, such slave shall be found so going at large and trading, the master or overseer shall again be liable to the like penalty, to be recovered as aforesaid, and so, as often after conviction as such slave shall be found so going at large and trading.

Ib. Sec. 10. Masters not to license their slaves to trade as freemen,

§ 14. If any person shall permit his or her slave to go at large, or hire him or herself out, every person or persons so offending, shall forfeit and pay to the use of the territory, the sum of fifty dollars; and it shall be lawful for any person to apprehend and carry such slave before a justice of the peace, in the county or corporation where apprehended, and if it shall appear to the justice that such slave comes within the purview of this act, he shall order him or her to the jail of the county or corporation, there to be safely kept until the next court, when, if it shall be made to appear to the court, that the slave so ordered to jail hath been permitted or suffered to hire him or herself out, contrary to the meaning of this act, the court shall immediately proceed to enter up judgment, and award execution against such offender, for the amount of said forfeiture with costs: *Provided*, That if the owner or holder of such slave or slaves shall enter into bond before said justice, payable to the governor and his successors in office, with sufficient security, in double the amount of said forfeiture, conditioned to appear at the next county court of the proper county, to do and receive what shall be enjoined him by the court, then such slave may be suffered to remain with his or her owner.

Ib. Sec. 11. nor to go at large, or hire themselves out.

Mode of proceeding against slave and owner.

§ 15. All runaway slaves may be lawfully apprehended by any person, and carried before the next justice of the peace, who shall either commit them to the county jail, or send them to the owner, if known, who shall pay for every slave so taken up, the sum of six dollars to the person apprehending him or her, and also all reasonable costs and charges.

Ib. Sec. 12. Runaway slaves, how to be dealt with.

§ 16. And whereas many times slaves run away and lie out, hid, and lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants of this territory; therefore, *Be it enacted*, That in all such cases, upon intelligence given of

Ib. Sec. 13. Powers of justices with respect to out-lying slaves.

two or more slaves lying out as aforesaid, any one justice of the peace of the county where the slaves are supposed to lurk or to do mischief, is required, by warrant, reciting their names and owners' names if known, to direct the provost of the patrols to take such power with him as he shall think fit and necessary for the effectual apprehending of such out-lying slave or slaves, and go in search of them, and upon their being apprehended, to commit them or any of them, to the jail of his county for further trial; and for every such out-lying slave by him apprehended and committed to jail as aforesaid, he shall be entitled to a reward of thirty dollars, to be paid out of the territorial treasury, three-fourths of which sum shall be reimbursed to the treasury by the owner of such slave: *Provided*, That if the owner be an inhabitant of this territory, the said sum shall be added to his tax for the current year, and be collected and accounted for in the same manner as other public taxes are: *And provided also*, That any other person or persons who shall apprehend and commit to jail as aforesaid, any out-lying slave, shall be entitled to the same reward for every such apprehension and commitment.

Reward for apprehending out-lying slave.

Ib. Sec. 14. Slaves prohibited keeping dogs.

§ 17. All slaves are hereby prohibited from keeping dogs, under any pretence or consideration whatsoever; and the slave or slaves so offending, upon complaint thereof before any justice of the peace, shall be punished with not exceeding twenty-five stripes for every such offence, and the master or owner who shall permit his slaves to keep dogs contrary to this law, shall forfeit and pay the sum of five dollars for each dog so kept, to the use of the person complaining; and moreover, shall make good all damages done by dogs appertaining to, or kept by any of his or her slaves.

Ib. Sec. 15. Slaves not to own any horse or mare.

In what manner they may keep hogs.

§ 18. No slave shall be allowed to own any horse, mare, gelding, or mule; and if any slave shall actually own such property, the same shall be forfeited and sold under the direction of the court of the county where such property shall be so owned; one moiety of the proceeds for the use of the territory, and the other moiety to any person who will sue for the same. It is also forbidden to slaves to keep hogs running at large, or to keep in enclosures more than they can conveniently maintain, the number of which to be regulated by the several owners, and to be distinctly marked, and register thereof made for the inspection of any person who shall require to see the same.

Ib. Sec. 16. No cruel or unusual punishment to be inflicted on slaves.

§ 19. And whereas, it has been the humane policy of all civilized nations, where slavery has been permitted, to protect this useful but degraded class of men from cruelty and oppression; therefore, *Be it enacted*, That no cruel or unusual punishment shall be inflicted on any slave within this territory. And any owner of slaves authorizing or permitting the same, shall, on conviction thereof, before any court having cognizance, be fined according to the nature of the offence, and at the discretion of the court, in any sum not exceeding two hundred dollars, for the use of this territory.

Ib. Sec. 18. Conspiring or advising rebellion, murder, &c.

§ 20. If any slave shall, at any time, consult, advise, or conspire to rebel, or make insurrection, or shall plot, or conspire the murder of any person or persons whatsoever, every such consulting, plotting, or conspiring shall be adjudged and deemed felony, and the slave or slaves convicted thereof, in manner hereinafter directed, shall suffer death.

Ib. Sec. 20. Trial of slave for felony, or capital offence.

§ 21. The trial of a slave for felony, or any capital offence, shall be in all respects similar to the trial of a free citizen or inhabitant, for the like offence,[1] except that the jury, or two-thirds at least thereof, empannelled for such trial, shall be composed of owners of slaves. And the court may take for evidence, the confession of the offender, the oath of one or more credible witnesses, or such testimony of slaves, or negroes, with pregnant circumstances, as to them shall seem convincing.

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[1] But see "Criminal Law,"— Trial of Persons of Color.

§ 22. When any slave shall be convicted of any offence within the benefit of clergy, judgment of death shall not be given against him or her upon such conviction; but he or she shall be branded on the face or breast by the jailer in open court, and suffer such corporal punishment as the court shall think fit to inflict, except where he or she once had the benefit of this act, and in those cases, such slave or negro shall suffer death without benefit of clergy.[1]

Ib. Sec. 21. Benefit of clergy.

§ 23. All slaves emancipated shall be liable to be taken by execution to satisfy any debt contracted by the person emancipating them, before such emancipation is made.

1805—(5) *Sec.* 1. Liable for debts contracted before emancipation.

§ 24. Any slave in this territory claiming his or her freedom, shall proceed by petition to the circuit court of the county where his or her master or owner shall reside, who, if the slave be in his or her possession, shall enter into bond with approved security to the governor, in a sum to be adjudged of by the court, that the said slave shall be forthcoming and subject to the order of said court, and that he will abide by the judgment the said court may render in the premises; in which case such slave shall remain in the service of his owner, or person claiming him or her, until the determination of the suit; and if out of the possession of his or her owner, or person claiming him or her, such slave shall enter into recognizance with sufficient security, to be approved of by the court, to make good to his or her owner all such costs and damages as he shall have incurred, in consequence of the application of such slave for the recovery of his freedom, in case he eventually fail in substantiating the same, and that he will be forthcoming and abide the sentence of the said court: [a]which power vested in said court, to take bonds and recognizances, may be exercised by a judge of the territory, out of court as well as in court.

Ib. Sec. 2. Slaves may sue for their freedom by petition to the circuit court. Preliminary proceedings.

[a 1815—(3) *Sec.* 1.]

§ 25. When any slave shall be committed to the jail of any county as a runaway, and such runaway slave shall not be claimed and proved by the owner thereof within six months from the first publication of the commitment of such slave, in some newspaper published in this territory, it shall be lawful for the sheriff of the proper county to sell said runaway slave at public auction, at the court-house of his proper county, upon giving at least thirty days' previous notice of such sale, by advertisement published in some newspaper in this territory, at the court-house of the proper county, and at least two other public places within the same; and out of the proceeds arising from the sale of any runaway slave as aforesaid, the sheriff shall be entitled to the same commission and fees as are allowed in cases of execution; and the balance, after paying all prison fees, and the maintenance of said runaway slave while in jail, shall be for the use of the proper county: *Provided*, That if the owner of such runaway slave shall, after such sale, prove his property in any such slave, the proper county shall pay to him the amount that shall have been paid into the county treasury, on account of the sale of such slave, but the right to any slave sold as aforesaid, shall be and remain vested in the purchaser under the sale made by the sheriff, as aforesaid, any law to the contrary notwithstanding.

1809—(7) *Sec.* 1. Runaway slave committed to jail, if not claimed by his owner, in six months after publication of commitment, may be sold by the sheriff.

Proceeds, after deducting expenses, to go to the county. Owner, on proof, may recover amount paid, but not divest purchaser's title.

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[1] But see "Crimes and Misdemeanors," § 37, abolishing the benefit of clergy in all respects.

1822—(17) *Sec.* 1. Negroes not to retail spirits.

§ 26. It shall not be lawful for any free negro or mulatto, either directly or indirectly, to retail any kind of spirituous liquors within this state.

Ib. Sec. 2. Penalty.

§ 27. Any free negro or mulatto, who shall directly or indirectly violate the provisions of this act, shall forfeit and pay the sum of ten dollars for every such offence; recoverable before any court having competent jurisdiction of the same, one half to the informer, and the other half to be paid into the county treasury.

Ib. Sec. 3. Punishment for a second offence.

§ 28. Any free negro or mulatto, who shall violate the provisions of this act, after having been once convicted and fined, shall, in addition to the fine imposed by this act, receive for every such offence, such corporal punishment on his or her bare back, not exceeding twenty-five stripes, as may be ordered by the court trying the same: *Provided*, that this act shall not affect any free negro, mulatto, or other person, who by the treaty between the United States and Spain, became a citizen of the United States, or the descendants of any such person.

1826—(3) Preamble.

Whereas, great injury and inconvenience are experienced by the citizens of many cities, towns, and neighborhoods, in the state of Alabama, in consequence of the illicit trade and traffic which is encouraged and carried on, by many evil disposed persons, with the slave population; for remedy whereof,

Sec. 1. Trading with slaves, without their owner's leave, indictable.

§ 29. *Be it enacted, &c.* That no person whatsoever shall buy, sell, or receive of, to, or from, any slave or slaves, any commodity of any kind or description whatsoever, without the leave or consent of the master, owner, or overseer of such slave or slaves in writing, expressing the articles permitted to be bought, sold, or bartered; or unless the master, owner or overseer of any such slave or slaves, shall personally authorize the same; and if any person or persons shall buy from, or sell to, or deal, or trade or barter with, any slave or slaves, without such consent and permission previously had, given, or obtained, he, she, or they so offending, shall be subject to indictment; and upon conviction, shall be fined not less than ten dollars, nor more than one hundred dollars, and imprisoned in the common jail of the county, not less than five days, nor more than six months, at the discretion of the jury by whom the indictment is tried, who may inflict one or both of the aforesaid penalties.

Penalty.

1832—(8) *Sec.* 9. Free persons of color for settling in the state, to receive thirty-nine lashes.

§ 30. From and after the first day of February next, it shall not be lawful for any free person of color to settle within the limits of this state; and should any free person of color, after that time, settle in this state, he, she, or they shall, on notice of this act, depart within thirty days, or shall be liable, on conviction before any justice of the peace, to receive thirty-nine lashes; and any person may arrest any such free person of color, and take him or her before any justice of the peace for trial; and if any such free person of color shall not depart this state within twenty days after the infliction of the punishment last mentioned, he or she shall be liable to be arrested by any person, and be taken before a justice of the peace for trial, and on conviction by such justice, shall be ordered to be sold as a slave for the term of one year for ready money, ten days' notice being given of the time of sale, one half of which, after paying all the expenses of the prosecution, (which shall be to the justice one dollar, the constable two dollars for summoning the witnesses, attending the trial, and selling the said free person of color, and fifty cents a day for each day he may keep such person of color, and fifty cents per day for each witness who may attend the trial,) shall be paid to the informer, and the other half to the state. And if any free person of color shall not depart this state within

Not departing within twenty days after punishment, to be sold as a slave for one year.

Proceeds, how applied.

twenty days after the expiration of said year, he or she shall forfeit his or her freedom; and upon conviction thereof before any circuit court of this state, shall, by order of said court, be sold to the highest bidder, and the proceeds of the sale of said free negro so forfeiting his or her freedom, shall go, one half to the informer, and the other half to the state.

Remaining still, may be sold as a slave for life.

§ 31. Any person or persons who shall attempt to teach any free person of color, or slave, to spell, read, or write, shall, upon conviction thereof by indictment, be fined in a sum not less than two hundred and fifty dollars, nor more than five hundred dollars.

Ib. Sec. 10. Penalty for attempting to teach slave, &c., to read, &c.

§ 32. Any free person of color who shall write for any slave, a pass or free-paper, on conviction thereof, shall receive for every such offence, thirty-nine lashes on the bare back, and leave the state of Alabama within thirty days thereafter; and should he or she again return to the state of Alabama, or be found within the same after the time above limited for his or her departure, on conviction of violating this provision of the law, he or she shall forfeit his or her liberty, and be sold as a slave for the term of ten years, by order of any two justices of the peace, before whom he or she may be taken and convicted, ten days' previous notice being given of the time and place of sale: one half of the proceeds of said sale, after paying one dollar each to said justices, and two dollars to the constable for attending the trial, and selling said free person of color, together with all other costs that may accrue, shall be paid to the use of the informer, and the other half to the use of the state.

Ib. Sec. 11. Penalty on free person of color for writing pass or free-paper for slave.

§ 33. Any slave who shall write for any other slave, any pass or free-paper, upon conviction, shall receive, on his or her bare back, fifty lashes for the first offence, and one hundred for every offence thereafter, by order of any justice of the peace before whom he or she may be convicted; and on every conviction, the owner of said slave shall pay one dollar to the justice of the peace, and two dollars to the constable for attending the trial and whipping the slave, together with all other costs that may lawfully accrue; and any persons may arrest any slave so offending, and take him or her before any justice of the peace for trial.

Ib. Sec. 12. Penalty on slave for writing pass or free paper for slave.

§ 34. If any free negro or person of color shall buy of any slave, or sell to any slave, any article or commodity whatsoever, without a written permission from the master, owner, or overseer of said slave, designating the article so to be bought or sold, said free negro or person of color, upon conviction thereof, before any magistrate of the county where such offence shall be committed, shall receive on his or her bare back, thirty-nine lashes well laid on.

Ib. Sec. 14. Penalty on free negroes, or persons of color, for trading with slaves.

§ 35. If any free negro or person of color shall be found in company with any slaves in any kitchen, out-house, or negro-quarter, without a written permission from the owner, master, or overseer of said slaves, said free negro or person of color shall, for the first offence, receive fifteen lashes, and for every subsequent offence, thirty-nine lashes, on his or her bare back, which may be inflicted by said master, owner, or overseer, or by any officer or member of any patrol company who may find said free negro or person of color, in any kitchen, out-house, or negro-quarter, associating with slaves without such written permission.

Ib. Sec. 15. Free persons of color forbidden to associate with slaves.

The punishment.

§ 36. If any slave, without a written permission of the master, owner, or overseer of said slave, shall be found in company with a free negro or person of color, in the dwelling-house or outhouse of said free negro or person of color, said free negro or person of color shall

Ib. Sec. 16. Same punishment if slave be found at the house of free person of color.

receive the same punishment, in the same manner, as is prescribed by the provisions of the fifteenth section of this act.

Ib. Sec. 17. More than five male slaves an unlawful assembly.

§ 37. It shall not be lawful for more than five male slaves, either with or without passes, to assemble together at any place off the proper plantation to which they belong; and if any slaves do so assemble together, the same shall be deemed an unlawful assembly.

Ib. Sec. 18. Unlawful assemblies to be dispersed by patrols and other officers. The punishment.

§ 38. It shall be the duty of all patrols and officers, civil and military, forthwith to cause said slaves so assembled, to disperse; and each of said slaves so assembled, shall be liable to receive any number of lashes, not exceeding ten: and any slave who may once be punished for attending such unlawful assembly, and shall again offend herein, shall be liable to be punished at the discretion of any magistrate before whom he may be carried for trial, by stripes not exceeding thirty-nine.

Ib. Sec. 19. Certain assemblies lawful.

§ 39. The provisions of this act shall not apply to any assemblage of slaves, attended by the master, owner, or overseer of such slaves.

Ib. Sec. 22. Slaves, &c., may attend public worship.

§ 40. Nothing in this act shall be so construed, as to prevent free persons of color and slaves from attending places of public worship held by white persons.

Ib. Sec. 23. Explanation of 17th section.

§ 41. Nothing in the provisions of the seventeenth section of this act shall be so construed, as to debar the master or owner of slaves from sending to his neighbor or neighbors any slave or slaves unaccompanied by master, owner, or overseer, for the purpose of assisting him or them to labor.

Ib. Sec. 24. Persons of color forbidden to preach to, or exhort other persons of color, except in presence of five slave-holders. Punishment. Proviso.

§ 42. If any slave or free person of color shall preach to, exhort, or harangue any slave or slaves, or free persons of color, unless in the presence of five respectable slave-holders, any such slave or free person of color so offending, shall, on conviction before any justice of the peace, receive, by order of said justice of the peace, thirty-nine lashes for the first offence, and fifty lashes for every offence thereafter; and any person may arrest any such slave or free person of color, and take him before a justice of the peace for trial: *Provided*, That the negroes so haranguing or preaching, shall be licensed thereto, by some regular body of professing Christians immediately in the neighborhood, and to whose society or church such negro shall properly belong.

SLAVE TRADE.

1815—(2) Slaves imported contrary to the laws of the U. S., to be condemned and sold.

§ 1. Any slave or slaves brought or imported into this territory, contrary to the laws of the United States, in such case made and provided, shall be condemned by any superior court of this territory, within whose jurisdiction the said slave or slaves shall be brought or be seized, upon libel filed in the said court; and shall be sold by the proper officer of the court to the highest bidder, at public auction, for ready money, after advertising the time and place of such sale, in some newspaper in this territory, at least fifteen days previous thereto.

Proceeds to go to the treasury, collector of the customs, and informer.

§ 2. The residue of the money arising from the sale, after deducting the costs of suit, shall be paid, one half to the collector of the customs within whose district the said slave or slaves shall have been seized, and the other half into the territorial treasury. But in case there shall have been an informer, one-half of the amount directed to be paid to the collector of the district, shall accrue and belong to said informer.[a]

[a] *But see* § 8 & 9.

1823—(3) *Sec.* 1.

§ 3. The governor of this state is authorized and required to appoint some suitable person, as the agent of the state, to receive all and every slave or slaves, or persons of color, who may have been brought into this state in violation of the laws of the United States, prohibiting the slave trade: *Provided*, That the authority of the said agent is not to extend to slaves who have been condemned and sold.

Governor to appoint an agent to receive slaves.

§ 4. The governor is required to take such bond or bonds from the said agent or other person, into whose possession the said slaves may be placed, in such amount, and with such conditions, as he may deem necessary to ensure their safe keeping and proper treatment.

Ib. Sec. 2. Agent required to give bond.

§ 5. The said slaves, when placed in the possession of the state as aforesaid, shall be employed on such public work or works, as shall be deemed by the governor of most value and utility to the public interest.

Ib. Sec. 3. Slaves to be employed on public works.

§ 6. Such part of the said slaves shall be hired out as will be sufficient to defray the expenditures necessary to the maintenance and support of those employed on the public works as aforesaid.

Ib. Sec. 4. Their maintenance.

§ 7. In all cases in which a decree of any court having competent authority, shall be in favor of any claimant or claimants, the said slaves shall be truly and faithfully, by said agent, delivered to such claimant or claimants; but in case of their condemnation, they shall be sold by such agent for cash to the highest bidder, by giving sixty days' notice in a newspaper, printed at Cahawba, Mobile, Tuscaloosa, Huntsville, and Florence.

Ib. Sec. 5. How disposed of after decree.

§ 8. The money arising from such sale or sales, shall be paid into the treasury of the state, except one-fourth thereof, which shall be paid to the informer, if there be one.

Ib. Sec. 6. Proceeds paid into the treasury.

§ 9. No informer shall be entitled to receive any part of the money arising from any such sales, except by virtue of the decree of the judge of the circuit court of the county into which such slave or slaves may have been first brought; and the circuit judges of this state are expressly authorized to try and decide all conflicting claims set up by informers in relation to said slaves.

Ib. Sec. 7. Judge empowered to decide on conflicting claims of informers.

§ 10. It shall be the duty of the said agent to ask for, and demand said slave or slaves of any person or persons in whose possession they may be found.

Ib. Sec. 8. Agent to demand slaves.

STOCK—OF THE STATE OF ALABAMA.

§ 1. The certificates of stock created in obtaining loans for the use of the state in pursuance of any of the laws heretofore passed for that purpose, and of all stock which may hereafter be created by the state, shall be assignable by endorsement made by the legal holder thereof, or by transfer in a book or books of the bank of the state of Alabama, made by the legal holder, or his attorney authorized by power duly authenticated; and it shall be the duty of the president and directors of said bank, to cause books to be kept for the purpose aforesaid; wherein also shall be kept an account of the said stock, and of all payments of principal and interest thereon, and of renewed certificates of stock, that may be issued in virtue of this act.

1833—(8) State stock assignable by endorsement.

§ 2. In case any of the said certificates shall be lost or destroyed, the same may be renewed in the manner following, to wit: proof of such loss or destruction, and an affidavit declaring the property therein to be *bona fide* in the applicant for renewal, shall be made before a judge of the circuit court of this state, or of any state of the United States, or before a judge of the supreme or any district court of the United States, which proof shall be certified by such judge, together

Manner of renewing lost certificate.

with his opinion that the same is satisfactory; and the legal proprietor of the lost or destroyed certificate shall execute a release of his interest therein, in consideration of a new certificate of stock, to be issued for the same amount and with like effect; which release shall be filed and recorded in a book kept for that purpose by the treasurer of the state; and it shall also appear that notice of the intended application shall have been given in a public newspaper in the state where the loan may be effected, for three months immediately before application for a renewed certificate shall be made; whereupon it shall be the duty of the governor of this state for the time being, the comptroller, treasurer, and president of the bank aforesaid, to issue new certificates of stock, in lieu of those which may be lost or destroyed; which renewed certificates shall express on their face, a description of the original, and that the same have issued in lieu of such original: and renewed certificates of stock so issued, shall be equally valid, and shall be assignable in like manner as the original certificates, in lieu of which they shall have issued.

Renewal for assignee, how regulated.

§ 3. No renewed certificate of stock shall be granted, in favor of an assignee of a lost or destroyed certificate, unless he appear to be such assignee by transfer in the books kept at the Bank of the State of Alabama, conformably to the requisitions of the first section of this act; or in case the assignment be by endorsement, unless such endorsement shall have been duly attested by the cashier of some specie-paying bank of the state where the loan may be effected; whereby in every case it shall be manifest that the person applying is the proper assignee; nor shall any payment of principal or interest be made to any assignee of a certificate of stock, unless such person appear to be the assignee in the manner provided by this act.

Repeal.
Proviso.

§ 4. All laws heretofore passed in relation to the transfer, and renewal of certificates of stock, are hereby repealed: *Provided*, That twelve months be allowed for the promulgation of this law in the other states, and that any proceedings which may be had in any other state, within twelve months next after the passage hereof, under the laws or any of them in force up to the time of the passage of this act, shall be as valid as if this act had not passed.

STRAYS.

1820—(30)
Strays taken up to be reported to some justice of the peace.
Justice shall summon appraisers,
and certify their appraisement to the clerk of the county court.
Several strays may be included in the same entry.

§ 1. EVERY person who shall take up a stray, which shall be found on his plantation or land, shall forthwith give information thereof to some justice of the peace for the county, and make oath before said justice, that the same was taken up at his or her plantation or place of residence, or his or her land adjoining the same, and that the marks or brands have not been defaced or altered since the taking up; and thereupon the said justice shall issue his summons to two disinterested householders of the neighborhood, commanding them, after being duly sworn, to value and appraise the same without partiality, favor, or affection, and certify the valuation under their hands, together with a particular description of the kind, marks, brands, stature, color, and age; which certificate shall be attested by the justice, and transmitted by him to the clerk of the county court within ten days thereafter, to be by such clerk entered in a book to be kept for that purpose, for which the justice and clerk shall each receive fifty cents, to be paid by the taker up: *Provided*, That if two or more strays of the same species are taken up by the same person at the same time, they shall be included in the same entry, and one advertisement, and the justice and the clerk shall receive no more fees than for one of such strays.

Death or escape of strays to be reported.

§ 2. When any stray as aforesaid shall be found dead, or shall have escaped, the taker up shall, without delay, make report thereof to the clerk on oath, who shall make a memorandum of the same in the margin of his book where the certificate of such stray was registered, and the taker up shall not be answerable for the same, nor shall the taker up be liable for using said stray: *Provided*, The same shall not have been abused.

Expenses of keeping a stray, how ascertained.

§ 3. When any stray shall be proved away, and the owner and the taker up cannot agree as to expenses, application may be made by either party to the next justice of the peace, who shall require two householders of the neighborhood, who shall have the privilege of appointing an umpire, and adjust the dispute, and their award shall be final.

Penalty for removing or selling stray under twelve months.

§ 4. If any person shall take or send away any stray out of this state, on any pretence whatsoever, or shall trade or sell the same under twelve months, he or she so offending shall forfeit and pay one hundred dollars, to be recovered in any court of this state having jurisdiction thereof, one half to the use of the informer, and the other half to the use of the county wherein the offence shall have been committed; and moreover shall pay the owner the amount of the appraisement, or if no owner appear, then to the county, subject to the regulations hereinafter ordered, under the sixth section of this act.

Penalty for taking up stray or using it contrary to this act.

§ 5. If any person shall take up or use a stray of whatever description, contrary to the meaning of this act, such person shall, for every such offence, forfeit and pay one hundred dollars, recoverable with costs in any court of this state having jurisdiction thereof, one half to the county, and the other half to the person suing for the same.

The property of strays vested in taker up.

Owner may demand the full price.

Taker up to pay half the appraisement.

Penalty for neglecting.

To be recovered by clerk.

§ 6. The property of every stray or strays taken up as aforesaid, twelve months after such appraisement, and not proved away by the owner thereof, shall be deemed vested in the taker up of the same: *Provided nevertheless*, That should the owner apply in five years, he shall receive the full amount of such appraised stray, one half from the taker up, and the other half from the county, after paying all reasonable expenses: *And provided also*, That the person so taking up shall account for and pay into the hands of the clerk of the county, one half of the appraised value of all such strays, according to the true intent and meaning of this act; and if the taker up shall neglect to account with the said clerk for the same, he or she so failing, shall forfeit and pay the appraised value of all such strays, to be recovered by action of debt before any jurisdiction having cognizance thereof, and it shall be the duty of the clerk to commence suits respectively against all delinquents for the recovery of the same, and shall be entitled to receive five per centum on all money recovered and received, and the balance the said clerk is required to pay over to the county treasurer.

Owner to receive half the appraisement.

§ 7. It shall be lawful for the former owners of any strays, at any time, on proving his property by one or more competent witnesses, to demand and receive from the county treasurer, one half of the value of any such strays appraised and accounted for as aforesaid, deducting therefrom the treasurer's commissions of two per centum for receiving and accounting for the same.

Stray horse, &c., to be exhibited at circuit court.

§ 8. It shall be the duty of the taker up of any stray horse, mare, or mule, to cause the same to be exhibited on the first day of each term of the circuit court of the county, next succeeding the time at which such stray shall be taken up, from twelve to four o'clock on each day, that the owner may have an opportunity of claiming his property.

Clerk to register and file certificates of strays.

§ 9. The clerk of each county of this state shall keep a book, in which he shall register all certificates of strays delivered to him, and file the same in regular order. It shall be his duty to cause a copy of the certificate of appraisement, of every horse, mare, colt, or mule, to be published in the nearest newspaper three times. It moreover shall be the duty of the clerk to make out a fair and correct list of all strays, and affix the same at the door of the court-house of their respective counties on the first day of each term of the circuit court, omitting such strays as are proved away, escaped, or dead, under the penalty of five dollars for such neglect or omission: the clerk shall receive as fees of office, for advertising any horse, mare, colt, or mule, twenty-five cents; and for every head of cattle, sheep, or hogs, six and one-fourth cents; and for every search of the stray books, twelve and one-half cents, to be paid by the person applying to search.

Strays to be published, and posted up.

Clerk's fees.

In what months cattle are not to be posted.

§ 10. No cattle or sheep shall be taken up or posted in the months of April, May, June, July, August, September, or October, unless it be a cow with a young calf.

Owners may prove property within twelve months.

Mode of proof.

§ 11. At any time within twelve months, it may be lawful for the owner of any stray or strays, taken up under the provisions of this act, to prove his or her property, by his or her own oath, or by the oath or affirmation of any other competent witness, in the following manner, to wit:—a certificate, giving a particular description of the stray or strays so claimed, shall be made out, giving the kind, marks, brands, stature, color, or age of such stray or strays, as may be, which certificate shall be sworn to and subscribed before any justice of the peace, and delivered to the taker up, to be filed in the clerk's office; and the delivery of such certificate as before mentioned, and payment of all costs incurred from posting and keeping such stray or strays, shall revest the same in the proper owner.

In case of division of counties.

§ 12. In all cases of the division of counties, the stray or strays shall belong to the county wherein the same may be found, and shall be disposed of as other strays posted in said county.

1823—(14) *Sec.* 1. Taker up of strays to enter into bond, payable to clerk of county court.

§ 13. Hereafter, when any person or persons shall be desirous of posting any stray that may be found on his, her or their premises, he, she, or they shall apply to some justice of the peace, of the county where such stray may be found, for the purpose of having such stray appraised; and on ascertaining the appraised value thereof in the manner now pointed out by law, the said justice shall require from the person or persons posting such stray or strays, to enter into bond with sufficient security to be approved of by said justice, to the clerk of the county court and his successors in office, in the sum of the full amount of the appraised value of such stray or strays, conditioned, that he, she, or they, will well and truly pay to the said clerk or his successors in office, half the amount of the appraised value of such stray or strays: *Provided*, The same is not proved away by the owner or owners thereof, within twelve months from the day of such appraisement: *And provided also*, That the stray or strays do not die or escape without the connivance or neglect of the taker up.

Amount and condition of bond.

Proviso.

Ib. Sec. 2. Penalty for using stray without giving bond.

§ 14. If any person or persons shall presume to use any stray or strays without first having given bond as aforesaid, he, she, or they, shall be liable to all the penalties prescribed in the fifth section of an act, passed the twenty-first December, eighteen hundred and twenty, to which this is an amendment, entitled "An Act to reduce into one the several acts concerning strays."[a]

[a] *See the preceding act.*

§ 15. It shall be the duty of the justice before whom such stray or strays may be appraised, to take such bond as is mentioned in the first section of this act; which bond he shall return, together with the post-note in the manner now pointed out by law for making return of the post-note of strays.

Ib. Sec. 3. Justice to take the bond, and return it.

§ 16. In addition to the fees now required to be paid by takers up of strays, at the time of posting the same, when such stray or strays, so posted, shall be of a description requiring publication in a newspaper, according to the ninth section of the act to which this is an amendment,[a] the taker up in such case shall pay the sum of two dollars, for the printing of said publication, to the justice, which shall be, by said justice, returned to the clerk of the county court with the certificate of appraisement, as is now provided by law.

1826—(4) *Sec.* 1. Additional fee when stray is required to be published.

[a] *The first act.*

§ 17. The said sum shall be, by the said taker up, recovered back of the owner of such strays, when proved away, as other expenses now are.

Ib. Sec. 2. Additional expense to be refunded by the owner.

§ 18. Any justice failing to return the appraisement of said strays and printing fees, so deposited with him, shall forfeit one hundred dollars for every such offence, recoverable by any person who will sue for the same, one half to the use of the said person, and the other half to the use of the county, before any court having jurisdiction of the same.

Ib. Sec. 3. Penalty on justice for failing to return appraisement and printing fees.

SURVEYORS.

§ 1. There shall be a surveyor for each county in this territory, who shall reside in the county of his appointment, and shall, before he enters on the duties of his office, give bond with good and sufficient security, to be approved of by the county court, in the sum of two thousand dollars, payable to the governor for the time being, and conditioned for the due performance of the duties of his office.[1]

1811—(6) To be one surveyor resident in each county. His bond.

§ 2. It shall be the duty of the said surveyor faithfully to execute all orders of survey directed to him, by any of the courts of this territory, and to make all surveys of lands, lying in the county, of which he is surveyor, and to which the United States have no claims, at the request of the owners or proprietors thereof, and generally to do whatsoever in the re-surveying, measuring, and dividing of lands may be required of him, by any person wishing the same done; and in all his mensurations, he shall use and be governed by the English perch or pole.

Surveyor's duties. To measure by the English perch or pole.

§ 3. The fees chargeable by the county surveyors shall be paid by the party desiring the services to be performed, and when the services are rendered in obedience to an order of court, in a suit therein depending, the surveyor shall make out and state an account of his fees for such services written in words at full length, on the back of one of the plats by him returned to the court, and the same shall be allowed in the bill of costs, to be taxed against the losing party, as other costs; but where it shall happen, that the survey, or any part thereof, was made at the instance of the party in the suit, such and so much of the

Ib. Sec. 4. Fees, by whom paid.

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[1] County surveyors, formerly appointed and commissioned by the governor, are now appointed by the judge of the county court and commissioners of revenue and roads; they receive, instead of a commission, a certificate of their appointment and qualification from the judge of the county court, and hold their offices for three years.—See "County Officers," and "Commissioners of Revenue and Roads."

fees shall not be taxed, as accrue on the work done by the surveyor for him.

Ib. Sec 5. Re-surveying and re-marking lands.

§ 4. It shall be the duty of the county surveyor, whenever called on for that purpose, to re-survey, and re-mark, and bound any tract of land in his county, where the old marks are defaced, or are likely to decay and perish, taking special care in all such cases, to be governed by the original surveys, patents, or title deeds, of such tracts; and the said surveyor shall make a plain report and certificate of all such re-marks and boundaries as he may make as aforesaid, and deliver the same to the proprietor or owner of the lands so re-bounded, whose duty it shall be, to have the same recorded in the clerk's office of the county wherein the land is situated, within three months thereafter, and the clerk's fee for recording the same shall be one dollar.

Ib. Sec. 6. Chain-carriers' and markers' fees.

§ 5. Chain-carriers and markers shall be allowed each one dollar per day for their services as such, to be paid in the same manner as is provided by this act for surveyors.

Ib. Sec. 7. Chain-carriers to be sworn by surveyor,

§ 6. Each surveyor appointed under this act, shall administer an oath to each of his chain-carriers, faithfully and diligently to perform their duties as chain-carriers without favor, affection, or partiality.

Ib. Sec. 8 and names to be entered on the plat.

§ 7. It shall be the duty of each of the surveyors, to be appointed under this act, to write the name of each of his chain-carriers down on his plat.

TAVERN-KEEPERS, AND RETAILERS OF LIQUOR.

1807—(31) Mode of granting tavern licenses.

§ 1. Every person who shall be recommended for the purpose to the county court of the county, in which such person may be desirous of keeping a tavern, by six or more reputable freeholders of the county, shall be entitled to receive from the county court aforesaid, a license to keep a tavern for and during the term of one year from the date of such license, and from thence until the next county court, after the expiration of the said one year: *Provided*, That on receiving the same, the said applicant shall pay to the clerk of the said court, in open court, *twenty dollars for the use of the county*,[1] and it shall be the duty of the said clerk to make an entry thereof on his minutes.

Applicant to enter into bond.

The applicant before the license is delivered to him, shall enter into and acknowledge his bond, with sufficient sureties, in the penal sum of three hundred dollars, payable to the governor and his successors in office, conditioned for constantly keeping and providing his tavern, with good, clean, and wholesome diet and lodging for travellers, and stabling, provender, or pasturage for horses, during the term of his license, and for the due observance of all laws and ordinances, which may be in force, in relation to tavern-keepers. And when such bond shall be so executed and acknowledged, the clerk shall file the same in his office, and deliver the license to the aforesaid applicant: for which and the bond, and all his services respecting the same, except the table of rates, the clerk shall receive two dollars. In case of the breach of, or not complying with the condition of the said bond, it shall be lawful for any person, in the name of the governor, to sue for and recover, in any court having jurisdiction thereof, the penalty of the

Remedy, on breach of bond

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[1] By the Revenue Law of 1827, the amount chargeable for a license to each species of retailers, tavern-keepers, &c. is particularly specified; with the further provision, that "no *county* tax shall be paid on licenses, except such as may be levied by the county."

said bond, and apply one half to his or her own use, and the other half to the use of the county, where the cause of action may arise.

County court to fix tavern rates.

§ 2. The justices of the county courts shall fix the rates and prices to be paid at all taverns in their respective counties, once a year at least, for liquors, lodging, diet, stabling, provender, and pasturage; and may increase or diminish the same, as to them may seem proper.

Tavern-keepers to post up rates in a conspicuous place.

And every tavern-keeper shall, within twenty days after the rates are fixed, set up in his public entertaining room, in a conspicuous place, a fair table of rates, certified by the clerk of the court, (for which the said clerk shall receive twenty-five cents,) there to be constantly kept exposed to public view as aforesaid, under the penalty of twenty dollars.

Penalty for charging more than lawful rates.

§ 3. If any tavern-keeper shall receive any greater price for any drink, diet, lodging, provender, stabling, or pasturage, than by such rate shall be allowed, he or she so offending, shall forfeit and pay ten dollars for every such offence.

Tavern-keepers not to suffer gaming.

§ 4. It shall be unlawful for any inn-holder or tavern-keeper to permit or suffer any cock-fighting; or playing with cards or dice; or to keep any gaming-table of whatsoever denomination, or any kind of gaming whatsoever, in his or her inn or tavern; or in any out-house, tenement, yard, or garden belonging thereto. And for every such offence, he or she so offending, shall forfeit and pay eight dollars.

Retailing without license.

[a 1812—(2) Sec. 1 & 3.]

[b 1814—(3) Sec. 1.]

Distillers.

[c 1816—(2) Sec. 1.]

Shop-keepers.

§ 5. Any person who shall presume to keep a tippling-house, or sell rum, brandy, whisky, taffia, or other spirituous liquors, in less quantity than one gallon; or shall sell any strong beer, porter, cider, or wine, in less quantity than four gallons, without a license first obtained as aforesaid, [a]shall be subject to a fine not exceeding one hundred dollars: [b]*Provided*, That all owners of distilleries within the territory shall be authorized to sell spirits of their own distillation in any quantity not less than a quart; [c]and that merchants and shop-keepers may retail liquors by the quart, without a license from the county court of their county, so that the same be not drunk with their consent and privity in their stores, or on the premises where they reside or have their stores.

Selling liquor to, or entertaining apprentice, servant, &c.

§ 6. If any inn-holder or tavern-keeper, or other person whosoever, shall give, sell, or deliver any kind of spirituous, fermented, or strong liquors whatsoever, to any apprentice, servant, or slave, or in any way entertain them, without the consent or permission of the master, owner, or such other person as shall have such apprentice, servant, or slave in his care; every person so offending shall, for the first offence, forfeit and pay the sum of ten dollars; and for every succeeding offence the sum of twenty dollars.

Selling liquor to troops of United States,

§ 7. No tavern-keeper, inn-holder, or retailer of spirits, shall presume to sell any rum, brandy, wine, or other kind of intoxicating liquors, to any soldier or soldiers stationed within this territory, belonging to and in the actual service of the United States, knowing him or them to be such, without permission from one of his or their commissioned officers. And such tavern-keeper or other person as aforesaid, so offending, shall for every such offence forfeit and pay the sum of twenty dollars: *Provided*, That nothing contained in this act shall be so construed as to extend to those who are permitted to sell within the military lines.

or Indians.

§ 8. If any person or persons, residing in, coming into, or passing through the Mississippi Territory, or any part thereof, shall presume to furnish, vend, sell, or give, or shall direct or procure to be furnished, vended, sold, or given, upon any account whatsoever, to any Indian or Indians, being within this territory, any rum, brandy, whisky, or other intoxicating liquor, or drink, without special permission in writing from the governor, as superintendent of Indian affairs, he or she so offending, shall forfeit and pay for every quart of such liquor or drink so furnished, the sum of twenty dollars; and for every quantity furnished at one time, less than a quart, the sum of ten dollars; to be recovered by any person suing for the same, before any justice of the peace of the proper county, when the sum of the penalty or penalties does not exceed the sum of twenty dollars; and when the sum shall exceed twenty dollars, before any court having competent jurisdiction; to be applied, in either case, one half to the informer, and the other half to the use of the territory.

Selling adulterated liquor.

§ 9. If any tavern or inn-keeper, or other person within this territory, shall presume to sell rum, brandy, or such like spirits, that is adulterated with water, or any other liquor, knowing the same to be adulterated, or mixed, and be convicted thereof by the testimony of one or more credible witnesses, he or she so offending, shall for every such offence, forfeit and pay twenty dollars.[1]

Drunkenness.

§ 10. If any inn-holder or tavern-keeper shall be convicted of being drunk in his own inn or tavern, besides the penalty consequent on the crime of drunkenness, his license shall immediately thereupon become void.

Mode of recovery.

§ 11. All the fines and forfeitures hereinbefore inflicted by this act, shall be recovered before any justice of the peace for the county wherein the offence may have been committed, one-half to the use of the county, and the other half to the use of the person suing for the same.[1]

1809—(3) *Sec.* 8. Licensed retailers to take an oath respecting slaves.

§ 12. All persons licensed to retail spirituous liquors, shall take an oath to the following effect, viz: "I, A. B. do solemnly swear (or affirm as the case may be) that I will not sell or retail any spirituous liquors to any slave, nor will I purchase any article whatever from any slave without a written permission from his master, owner, or employer: So help me God."

1810—(3) *Sec.* 6. Mode of obtaining license in vacation.

§ 13. Whereas persons are sometimes desirous of obtaining permission to retail spirituous liquors during the recess of courts: *Therefore be it enacted*, That on such person taking the oath required by law, which oath the clerk is hereby authorized to administer, and entering into bond with security as the law directs, and depositing with the said clerk of the court the amount of the tax and fee on such license; the said applicant shall be entitled to receive from said clerk a certificate of such deposit, for which the said clerk shall receive fifty cents for his fee thereon; and such applicant shall thereby be authorized to retail liquors, &c. until the next succeeding county court, to which the said applicant shall present the certificate for approbation, and if approved by the court, the clerk shall issue a license to the said applicant, to continue in force for one year from the date of said certificate; and if not approved, the clerk shall refund to the applicant so much of the tax as corresponds to the time yet to come of one year from the deposit.

1812—(2) *Sec.* 1. Clerk of county court to furnish circuit court with a list of those licensed during the last year.

§ 14. It shall be the duty of the clerks of the several county courts, on the first day of each term of the superior court of their respective counties, to furnish the court with al ist of the persons who have obtained tavern licenses within one year immediately preceding such court; and every clerk neglecting so to do, may be fined by said court in any sum not exceeding fifty dollars, which list shall be delivered by the court to the grand jury for their information; and this act, together with the act to which this is an amendment, given in charge by the court to the grand jury aforesaid; and the grand jury shall present every person or persons who may violate this act, or the acts to which this is an amendment; and it shall be the duty of the judges of the superior court, upon such presentment being made by the grand jury, to cause the person or persons so presented, to appear before the court, to be tried by a petit jury, without any indictment being filed, and if found guilty, the court shall assess a fine, not exceeding one hundred dollars, on every person or persons so found guilty.

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[1] See "Public Health."

[2] From this mode of recovery are excepted the fines authorized in the fifth section, which are imposed by a later act, the original penaties being repealed. See § 14, 16.

Amount of fine.

§ 15. The fines imposed by virtue of this act, shall be paid into the county treasury, to be appropriated to county purposes.

Ib. Sec. 2. Fines to the county treasury.

§ 16. So much of the fifth section of the act to which this is an amendment[a] as imposes fines for the violation of said act is hereby repealed, and the fines imposed by this act substituted in lieu thereof.

Ib. Sec. 3. Former fines repealed.

[a *1st act under this title.*]

§ 17. Any person residing without the limits of any town or village, wishing to keep a tavern, and complying with the requisites of the law, shall be entitled to receive a license upon paying the sum of ten dollars, in lieu of the sum of twenty dollars heretofore required by law.[1]

1814—(11) *Sec.* 1. Tavern license in the country, 10 dollars.

§ 18. It shall be the duty of the sheriff of each county, if it should come to his knowledge by information or otherwise, that any person is retailing spirits, to give information thereof to the attorney-general, at the commencement of each term of the superior court of his county, and to furnish a list of the witnesses to prove the same, and the attorney-general shall cause the said witnesses, provided such person has not obtained a tavern license, to be sworn and sent to the grand jury; he shall also at each term of the superior court, move that a fine be assessed against every clerk who shall neglect to furnish the court with a list of the persons having obtained tavern licenses agreeably to the provisions of the act passed the eighteenth day of November, one thousand eight hundred and twelve.[b]

Ib. Sec. 2. Sheriffs to give information to attorney-general, of offenders.

Attorney-general required to move against clerks not returning a list of retailers.

b *See* § 14.

§ 19. It shall be the duty of the assessors and tax-collectors of the several counties within this territory, to inquire and ascertain as well as they can, the name or names of every person or persons within their respective counties, who shall retail any vinous or spirituous liquors without being licensed according to law, and give information thereof, with a list of the witnesses who can prove the same, to the attorney-general, at the commencement of each term of the superior court of their proper county, or to the nearest and most convenient justice of the peace, of the county or corporation where such unlicensed person or persons have committed the offence; and it shall be the duty of each clerk of every county within said territory, on application for the same, to furnish each assessor and collector of his proper county, with a complete list of licensed retailers of vinous and spirituous liquors within such county, showing the commencement and end of such license.

1815—(15) *Sec.* 24. Assessors and collectors to inquire who sell liquor without license, and lodge information.

Clerk required to furnish collector with a list of persons licensed.

§ 20. It shall not be lawful for free negroes to be licensed to keep tavern, or retail spirituous or vinous liquors.

1816—(2) *Sec.* 2. Free negroes not to be licensed.

§ 21. It shall be the duty of the grand juries in the several counties to present any person or persons who shall retail or sell spirituous liquors to any Indian or Indians, in violation of an act of assembly heretofore passed on that subject; and the penalty or penalties pre-

1816—(3) *Sec.* 1. Grand juries to present persons selling liquor to Indians.

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[1] But see a later law, "Taxes,"—§ 8.

Penalties to the county.

scribed by the said act, may be recovered upon presentment, and shall go to the use of the county in which the offence shall have been committed.[a]

[a] See § 8.

TAXES.

Subjects and Rate of Taxation.

Act of congress—1819. *Sec.* 6. Land sold by U. S. after 1st Sep. 1819, exempt from tax for five years. Lands of non-residents, and of U. S.

§ 1. Each and every tract of land sold by the United States, after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax laid by the order, or under the authority of the State (*of Alabama*) whether for state, county, township, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof: and the lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and no tax shall be imposed on lands, the property of the United States.

[b] Con. Ala. Art. 6. *Sec.* 8. Lands taxed according to value.

[b] § 2. All lands liable to taxation in this state, shall be taxed in proportion to their value.

1826—(27) *Sec.* 1. Exemptions from poll-tax.

§ 3. All free persons who by any bodily infirmity, may be exempt from working on public roads in this state, shall also be exempt from paying poll tax: and all free persons of color who shall have attained the age of sixty years, shall not be liable to pay poll tax.

Ib. Sec. 2. Slaves over ten years of age, wholly unprofitable, exempt from tax.

§ 4. All slaves who may be lunatic, blind, or insane, or from other cause may be entirely unprofitable to their owners, shall not be subject to taxation in this state: *Provided*, Nothing in this act shall be so construed as to exempt from taxation any slave under ten years of age.

1827—(19) *Sec.* 1. Lands classed and divided into qualities. Owner to state quality on oath. Return, to whom made.

§ 5. All lands in this state, subject to taxation, shall belong to one class; the first quality of which shall be rated at sixteen dollars, the second quality at ten, the third quality at four, and the fourth quality at one dollar and twenty-five cents; and the owner or person subject to pay taxes for the same, shall, when he or she shall give in a list of his or her lands, state on oath to which quality he or she believes his or her lands belong; *Provided*, That every person owning lands in this state, liable to pay tax, shall make return to the tax collector of the county in which he or she may reside.

Ib. Sec. 2. Amount of tax on land. Where partial payments for land are made to U. S., tax in proportion.

§ 6. The sum of ten cents for every hundred dollars shall be paid on all lands in this state which have been cleared out of the land-office, or to which a complete title has been obtained by the owner; and the tax on all lands purchased of the United States, shall be proportioned to the number of instalments paid by the proprietor at the time of assessment, as well as to its class or quality; and if one instalment only be paid to the government, one fourth only of the amount of tax accruing by the laws of the state, on land of the same quality, shall be assessed or collected; and in like proportion when a second or third instalment shall have been paid.

Ib. Sec. 3. Tax on town property. Merchandise.

§ 7. The sum of ten cents shall be paid for every hundred dollars value of all lands, lots, or buildings, within any city or town, to be estimated by the person giving in the same upon oath; twenty cents for every hundred dollars on the amount of merchandise, domestic or foreign, except such domestic articles as are manufactured within this state, sold between the first day of May, 1826, and the first day of May, 1827, and so on hereafter, between the first day of May in one year, and the first day of May in the succeeding year; and if any person or persons vending merchandise shall refuse to give in a list of the amount of goods sold on or before the first day of August annually, he or they shall forfeit and pay the sum of three hundred dollars, to be collected by the assessor and collector in the same manner as other state and county taxes are collected, which amount shall be paid into the state treasury: And for every slave not exceeding ten years old, fifteen cents; and for each over ten and under sixty, fifty-six and a fourth cents;[1] for all free male negroes and mulattoes over twenty-one years, one dollar each; for all free white males above the age of twenty-one years, and not exceeding forty-five, twenty-five cents each; for all pleasure carriages and harness, fifty cents on every hundred dollars of their estimated value, to be ascertained by the oath of the party giving in the same to the assessor; for every horse kept exclusively for racing, the saddle, or pleasure carriage, fifty cents; for every public race track, ten dollars; for every stud horse or jack-ass, the amount for which said stud or jack may stand by the season; for all neat cattle which may be owned by any one citizen of this state, and for every head of neat cattle owned by any person, not a citizen freeholder of this state, over twenty-five head, work oxen excepted, per head, one and a half cents; for every billiard-table kept for play, two thousand dollars: for each license granted to every hawker or pedler in each county, [twenty-five dollars][2] for every wagon, carriage, or cart, by them employed and used for pedling; and in case any hawker or pedler shall sell any goods or merchandise without first taking out license, and paying for the same agreeably to law, he shall forfeit and pay the sum of two thousand dollars, to be recovered in any court having competent jurisdiction, one half to the use of the state, and the other half to the use of the informer: And it is hereby made the duty of all sheriffs, constables, and justices of the peace, whenever they see any hawker or pedler vending goods or merchandise within the limits of the counties in which such officers reside, to demand of such hawker or pedler, the production of his license, and, on failing to produce it, he shall forfeit and pay the sum of fifty dollars, to be recovered before any court having jurisdiction of the same, half to the informer, and half to the use of the county:[3] on all goods sold at auction, other than those which are exempted by law, two per centum on the amount of sales;[a] for every gold watch, kept for use, one dollar; for every silver or other watch kept for use, twenty-five cents; for every clock kept for use, the works of which are made of metal, one dollar; for every clock of any other description, kept for use, twenty-

Penalty for not returning sales.

Slaves.

Free colored.

White polls.

Pleasure carriages.

Saddle horses.

Race track.

Stud horse or jack-ass.

Neat cattle.

Billiard-tables.

Hawkers and pedlars.

Penalty.

Duty of sheriffs, constables, and justices, in relation to hawkers, &c.

Auction sales.

Watches.

[a] *See* § 65.

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[1] See "Criminal Law,"—§ 61.

[2] Now fifty dollars.—See § 13.

[3] Act of November 21, 1818, corrected. Sec. 3. It shall be lawful for the clerk of the county court of each county in this state, and he is hereby required, *upon the terms prescribed by an act entitled "An Act to raise a revenue for the support of government, until otherwise altered by law," passed January* 13, 1827, to grant licenses to be by him subscribed, to all hawkers and pedlers; for issuing and recording which licenses, the said clerk shall be entitled to receive as a fee, the sum of two dollars for each license, in addition to the said tax.

Sec. 4. If any person shall forge or counterfeit any license or licenses, or travel with such forged or counterfeited licenses, knowing the same to be forged for the purposes aforesaid, such person shall forfeit the sum of two hundred dollars, one moiety thereof to the county, and the other moiety to him that shall prosecute and sue for the same, to be recovered before any court having competent jurisdiction.

Sec. 5. Nothing herein contained shall be construed to extend to, or hinder any person from, selling or exposing to sale any sorts of goods or merchandise in any public market or fair within the state; but such person may do therein as he or she lawfully might have done before the making of this act.

Money at interest. Playing cards.

five cents; for money loaned at interest, for every hundred dollars, twenty-five cents; on every pack of playing cards sold, given away, loaned, or otherwise disposed of, one dollar.

Ib. Sec. 4. Licenses to tavern-keepers and retailers. Taxes to be paid to the clerk. Restriction on county taxes.

§ 8. For every tavern license in any city or town, there shall be paid as a tax, twenty dollars; for keeping a house of entertainment in any city or town, without retailing spirituous liquors, ten dollars; on every retailer of spirituous liquors in any city or town, fifteen dollars; on every retailer of spirituous liquors in the country, on the road or highways, ten dollars; all of which taxes shall be paid to the clerk issuing the license, and by him immediately to the tax-collector; and the clerk shall receive for his services the fees heretofore allowed for issuing licenses; and no county tax shall be paid on licenses, except such as may be levied by the county court of such county, and all county moneys that may come into the hands of clerks in this state, shall be paid into their respective county treasuries.

Ib. Sec. 5. Tax on bank shares. Additional tax when banks refuse to pay specie. When paid. Penalty. Defaulting banks, how proceeded against.

§ 9. On all shares of bank stock in any bank in this state, chartered by the authority of the same, or by the Alabama Territory, held by any individual, partnership, or body corporate, and on all shares held by any citizen of this state in the bank of the United States, there shall be levied and collected yearly a revenue at the rate of fifty cents on each share of one hundred dollars: *Provided nevertheless*, That if any of said banks, chartered by this state or the Alabama Territory, shall refuse to pay specie for their notes, in that case there shall be levied and collected an additional tax of fifty cents on each share held as aforesaid, in any bank or banks so refusing to pay specie for their notes; and the president and directors, or cashier, on making out their last dividend for each preceding year, shall return the amount of taxes, and pay the same into the treasury of this state, and shall produce the treasurer's receipt on or before the second Monday in December, in every year; and on failure thereof, the president and directors of said bank, or any number of them in their corporate capacity, shall pay to the state two thousand dollars; and in case of any such failure, it shall be the duty of the comptroller of public accounts to direct the solicitor of the circuit in which such defaulting bank or banks may be, to proceed to the recovery of the same, on motion in the circuit court; the said comptroller of public accounts giving notice in some newspaper published at the seat of government, Mobile, Huntsville, or Montgomery, to the said defaulting bank or banks, of the motion so to be made; and the certificate of said comptroller shall be deemed and taken as full and sufficient evidence of such default or failure.

Ib. Sec. 6. Museum, wax-works, feats of activity, slight of hand, and plays, to be licensed. Penalty for exhibiting without license.

§ 10. Every person who shall exhibit, or cause to be exhibited, for hire or emolument, any museum, wax-works, feats of activity, slight of hand, or plays, shall first obtain from the clerk of the county court of the county where the same may be exhibited, a license authorizing the same, for which the party applying shall pay to the clerk twenty dollars for the use of the state, together with one dollar as a fee to the clerk for issuing the same; and the clerk shall account for the said tax in the same manner as he is required to account for taxes collected on retail and tavern licenses: and every person who shall exhibit as aforesaid, without first obtaining such license, shall forfeit and pay the sum of two hundred dollars, to be recovered before any court having competent jurisdiction, at the suit of said clerk, or any other person in the name of said clerk; which sum so recovered, shall be paid over as aforesaid, after deducting therefrom one hundred dollars for the use of the person who may sue as aforesaid.

Ib. Sec. 7. Stud horses and jack-

§ 11. Stud horses and jack-asses shall be taxed from and after the first day of May, and the assessor shall take the lists of those articles in relation to that day; and it shall be the duty of the collector of the revenue to collect the tax on all jack-asses and stud horses which have stood the season in their respective counties, whether they have been listed with the assessor or not, and account for the receipts as other taxes.

asses to be taxed after the first of May.

§ 12. If any person or persons shall by him, her, or themselves, or by his, her, or their agent, keep or permit to be kept, a billiard-table for play, or in a situation to be played on, in his, her, or their house or houses, without first obtaining a license from the county court of the county in which such table may be kept, he, she, or they, shall forfeit and pay the sum of four thousand dollars, to be recovered in any court having jurisdiction thereof, one half to the person suing for the same, and the other half to the state.

Ib. Sec. 13.
Penalty for keeping an unlicensed billiard-table.

§ 13. There shall be paid for each license granted to any hawker or pedler of clocks, or other goods, wares, or merchandise of any kind whatever, in each county, the sum of fifty dollars; and in case any hawker or pedler shall barter, exchange, or sell, either absolutely or for a limited time any clock or clocks, or other goods, wares or merchandise of any kind whatsoever, without first taking out license agreeably to the laws in relation to other hawkers and pedlers, he shall forfeit and pay two hundred dollars, to be recovered in an action of debt, one half to the use of the state, and the other half to the use of the informer; and all bonds, notes, or promises made to any hawker or pedlers as aforesaid, the consideration of which shall be for any clock or clocks, or other goods, wares or merchandise of any kind whatsoever, shall be utterly void, unless the party selling the same, shall have first procured a license to sell aforesaid.

1832—(36)
Sec. 2.
License to hawkers and pedlers of clocks, &c. $50.
Penalty for selling, &c. without license.

§ 14. The present rate of taxation shall be reduced one fourth of the present amount, which reduction shall be uniform upon the several items, which are now subject to taxation, by the existing laws of this state; except the taxes imposed by law, upon hawkers, pedlers and retailers of spirituous liquors.

1833—(19)
Sec. 1.
Taxes reduced, except upon pedlers and retailers of liquors.

NOTE.—In addition to the taxes imposed by the foregoing acts, the assessors and collectors are required to assess and collect annually "a tax of one cent on all negroes under ten years, and two cents on all negroes over ten and under sixty," to raise a fund for the relief of owners of slaves executed in pursuance of a sentence of court. See "Criminal Law,—*Trial of Slaves,*"—§ 61. The real and personal estate of the University of Alabama, and the persons of all officers, servants, and students attached thereto,—all houses and lots of land held by incorporated academies, and all churches and the lots on which they are erected, not exceeding two acres, are exempted from taxation. See "University," "Academies," and "Religion." Indians and their descendants of mixed blood residing within the limits of the territory claimed by any of the Indian tribes, are exempt from tax; but white persons living within such territory, attached to any county in the state, are subject to the same laws, in all respects, as other whites.—See "Indians and Indian Territory."

ASSESSMENT AND COLLECTION OF TAXES.

§ 15. Every person shall be liable to pay taxes upon all property, both real and personal, of which he shall stand seized, or have in his custody, either as attorney, agent, guardian, executor, or administrator, subject to taxation, on the first day of March in each year; and every person who shall sell and convey away any property, either real or personal, after the first day of March, shall give in a list of the same, with his or her taxable property for that year.

1821—(34)
Sec. 11.
Persons holding property on first of March liable for its tax.

1827—(19) *Sec.* 14. Property exempt, if tax has been paid in another state before 1st of March.

§ 16. If any person shall remove property liable to taxation, within the limits of this state, previously to the first day of March in any year, such property shall not be liable to taxation, if the owner of such property can produce a receipt to the assessor, showing that taxes have been paid on the same in the state from which the property may have been removed, the same year.

1821—(34) *Sec.* 4. Taxable property to be given in from first of April to first of July.

Assessor to state total amount.

Delinquents liable to additional charge.

Persons sick or absent, may send a sworn list.

Return by agent.

§ 17. From the first day of April to the first day of July in every year, is hereby established as the time when the list of taxable property shall be given in, by every person living in this state who is liable to pay taxes; which list shall contain an enumeration of the taxable property in his or her charge, within said county;[1] and in the account of the lands, the particular description of the situation and quality of the same, and to what class it belongs; also each town lot of land, with the dimensions of and improvements thereon; also the amount of sales of all merchandise sold within the year ending on the first day of March[2] immediately preceding the time at which the assessors are herein directed to commence the duties of their office; and the assessor shall state in the last column of his list, the total amount of the taxes due from each person chargeable with taxes. And all persons failing to make return of their taxable property as aforesaid, shall be deemed delinquents, and shall pay the assessor or collector fifty cents, as a compensation for having to go to the place of residence of such delinquent, for a list of his or her taxables, or the amount of taxes due from such delinquent: *Provided*, That in case of sickness, or absence on business from the county, of any person having or owning taxable property, it shall be lawful for such person to send his list of taxables to the assessor and collector, sworn to before any justice of the peace in the state: or any person may render his list of taxables, sworn to by his agent.

Ib. Sec. 5. Assessor to advertise days of giving in taxables.

§ 18. It shall be the duty of the assessors to advertise at three public places in each captain's district, at least ten days previous to the days herein established, for giving in taxable property; and it shall be the duty of the said assessors to attend at the muster ground in each captain's district, two days of the time of giving in the list of taxable property.

Ib. Sec. 6. List to be given in on oath

administered by assessor.

§ 19. At the time of giving in to the assessor a list of taxable property, the person giving in the same shall take the following oath or affirmation, to wit: "I, A. B., do solemnly swear or affirm, that the list of taxable property which I have charge of in the county of ——, subject to taxation, contains a true statement, to the best of my knowledge and belief: So help me God."[3] Which oath the assessor is authorized to administer to the person giving in the list.

1827—(19) *Sec.* 15. Penalty for receiving list unless on oath.

§ 20. The assessor and tax-collector shall not, in any instance, receive any list of taxable property, unless on oath; and for every failure on his part to require such oath to be made, he shall forfeit and pay the sum of twenty dollars; one half for the use of any person suing for the same, and the other half for the use of the state.

1821—(34) *Sec.* 16. Assessor's receipt.

§ 21. The assessor shall deliver to each individual whose property he assesses, a concise statement of the property assessed, and the amount; which he shall date and sign.

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[1] By the revenue act of 1827, all lands, no matter where situated, are required to be returned to the assessor of the county in which the owner resides. See proviso,—§ 5.

[2] Now the first of May.—See § 7.

[3] It will be observed that this oath was framed according to the laws in force in 1821, and before the passage of the act requiring a statement of *all* taxable lands to be rendered in the county of the owner's residence.

§ 22. If any assessor shall go to the house or usual place of abode, of any person within his county, who hath in his or her charge any taxable property, and shall not find such person at home, he may leave a written notice at the place of residence of such person, requiring him or her to give in to him, on or before the day on which the assessor is directed to finish receiving lists of taxable property, his or her taxable property: and if such person fail to comply with the requisitions of said notice, he shall be considered as a delinquent, and shall be doubly taxed, according to the best information that the assessor can obtain: *Provided*, Where any person holds taxable property in any other county than that in which he resides, and hath no agent in said county to give in the same, he may send to the assessor of such county, a list of his property in such county subject to taxation, sworn to before, and certified by, some justice of the peace.

1815—(15) *Sec.* 5. Assessor may leave a written notice. Penalty on delinquents. Taxable property out of county of owner's residence, how rendered.

§ 23. If any person shall remove from the county in which he may reside, after the first day of April in any year, without returning to the assessor a list of his taxable property, he shall return such list to the assessor of the county to which he shall remove.

1827—(19) *Sec.* 12. Persons removing after first April, where to make return.

§ 24. In case of the neglect or refusal of any person or persons, to give in a list of their town property, it shall be the duty of the assessor to value the same; and the collector shall collect the amount of tax due thereon, in the same manner as if the same had been given in by the owner or owners thereof.

Ib. Sec. 14. Town property not given in, may be valued by assessor, and taxes collected.

§ 25. Should any person or persons refuse or neglect to give in his, her, or their list of taxable property, on application of the assessor and collector of taxes, within the time prescribed by law, he, she, or they so neglecting or refusing, shall pay a double tax on all property so refused or neglected to be given in, to be collected and accounted for in the same manner as other taxes.

Ib. Sec. 16. Persons refusing to give in, on application, liable to double tax.

§ 26. It shall be lawful for the assessor and collector for the county of Mobile, to commence assessing and collecting the taxes within the corporate limits of the city of Mobile, on and after the first day of March in each year.

Ib. Sec. 17. Collector may commence in Mobile after first March.

§ 27. No collector shall be authorized to collect any tax, until the assessment shall have been completed, and a list thereof returned to the clerk of the county court of his county.

1824—(32) *Sec.* 14. Collection after assessment is completed.

§ 28. The respective assessors and collectors shall proceed after the first Monday in July, in every year, to collect the taxes, and shall pay into the public treasury, all moneys which may be due from them respectively, on or before the second Monday of December, in every year.

1821—(34) *Sec.* 9. When to commence. When paid into the treasury.

§ 29. The tax-collectors shall receive in payment of the taxes imposed by law, any gold or silver coin, or warrants issued on the treasury of this state, or the bank bills or notes of such banks within this state as pay specie for their notes, and all other bank bills or notes that may be received in the land-offices of the United States for this state.

Ib. Sec. 14. Kind of money receivable for taxes.

§ 30. The governor of this state on receiving information which can be accredited, of the refusal, or stoppage, or failure, of any bank or banks either within or without this state, to pay specie for their bills or notes, shall direct the comptroller to issue circulars to the several tax-collectors in this state, apprising them respectively of such refusal, stoppage, or failure, on the part of such bank or banks to pay specie as aforesaid.

Ib. Sec. 15. Governor to notify comptroller of banks' stopping specie payments. Comptroller to issue circulars to collectors.

§ 31. If any collector shall demand and receive of any person, more money than he shall be entitled to demand and receive, under color of his office as collector, he shall forfeit to the party aggrieved three

1815—(15) *Sec.* 16. Penalty on collectors for extortion.

times the amount of the same so extorted, recoverable in any court having competent jurisdiction, together with costs.

Ib. Sec. 22. Persons removing after assessment, certificate to be forwarded, and distress and sale made.

§ 32. When any person or persons liable to pay taxes, may, after being assessed, remove from the county in which he, she, or they may have been so assessed, not having paid their taxes, the collector of the county in which he, she, or they may have been so assessed, is hereby required to send, certified under his hand, a transcript from his tax-list to the collector of the county where such delinquent or delinquents may be; and the collector of such last mentioned county, is authorized upon such transcript to proceed to make the money by distress and sale, or otherwise, and immediately transmit the amount so made to the collector who sent the said transcript; for which services the collector making the said money shall receive the compensation allowed by law for similar services.

Ib. Sec. 19. When sued, may plead the general issue, &c.

§ 33. If any assessor or collector, shall be sued for any matter or thing done in pursuance of the powers given in this act, he may plead the general issue, and give this act and the special matter in evidence.

1821—(34) *Sec.* 13. Collector may collect arrearages due his predecessor.

§ 34. All persons who may be appointed to collect the taxes of any county in this state, are hereby authorized and empowered to collect all arrearages of taxes, that may remain unpaid to the persons appointed to collect the same; under the same regulations as are prescribed for the collection of taxes in other cases.

1815—(15) *Sec.* 11. List of taxes to have the force of an execution, after the first of Sept. [a 1821—(34) *Sec.* 10.] Notice of sale of goods and chattels. Notice of sale of lands. Residents. Non-residents. Description of lands. Sales of lands to be at the court-house. Size of lots. How much to be sold. Collector's commissions for selling.

§ 35. All lists of taxes shall be considered as having the force and effect of an execution; and it shall be lawful for all assessors and collectors of taxes, from and after the first day of September in each year, to proceed to make distress and sale of the goods and chattels, lands and tenements, of all persons in arrear for taxes: [a]*Provided*, That notice of such sale shall have been given, by advertisement at the door of the court-house of the proper county, and at least two other public places within the county, at least ten days previous to the day of sale, where the distress shall be of the goods and chattels; and where the delinquent has no goods and chattels within the county, then the lands and tenements of said delinquent within the county may be sold by the collector, or so much thereof as will be sufficient to satisfy and pay the amount of taxes due from such delinquent, together with all costs and charges accruing thereon: *Provided*, That the collector shall have given in the nearest newspaper published in this territory in the case of residents within the same, at least three months' notice; and in the case of non-residents, at least six months' notice, of the time and place of sale, previous to such sale: which notice shall contain a particular description of the land for sale; on what water-course it is; and by what lands the same is bounded; and to whom the same was granted, or by whom the same is now owned or claimed. And when real property is sold, the sale shall always be at the court-house of the proper county; and there shall not be sold in one lot, more than three hundred and twenty acres of land; but if one lot shall not sell for the amount of taxes due from the delinquent, together with all costs and charges that shall have accrued thereon, the collector shall sell as many lots or parts of lots, as shall raise the full amount due; but in no case shall the collector sell any more land than shall be sufficient to raise such sum as shall be due: and the collector shall be entitled to demand and receive from each delinquent whose property shall have been advertised, in addition to his other compensation for collecting the taxes, a commission of five per centum upon the amount raised or to be raised; and when the collector shall sell real property, two dollars for each deed of conveyance: *Provided*, That if the land of any person under age or insane be sold, it shall be redeemable at any time within one year after such disability be removed, upon repaying the amount that the purchaser may have paid, inclusive of subsequent taxes paid on said land, with interest thereon at the rate of six per cent. per annum, until the time of redemption.

Redemption of the lands of infants and insane persons.

§ 36. It shall be lawful for all tax-collectors, other officers or persons, who by law are required to advertise any notice in any newspaper in this territory, to publish the same in that paper which is most convenient to the person or persons thus required to advertise.

1814—(16) *Sec.* 1. In what papers notice may be published.

§ 37. The taxes imposed by virtue of this act, shall be preferred to all incumbrances and securities whatever: and if any person between the time of rendering a list of his taxable property to the assessor, and the time at which the collector is authorized to make distress, shall be about to remove without the limits of his county, the collector upon receiving information thereof, shall immediately make distress of the goods and chattels of the person about to remove, sufficient to satisfy the amount of taxes that he may owe, and sell the same upon giving the notice herein before directed, in the case of goods and chattels;[a] and all taxes assessed on any person or persons under this act, shall be a lien upon his real property lying within the county in which the assessment was made, from the first day of January of that year.[1]

1815—(15) *Sec.* 12. Taxes to have precedence of all other incumbrances.

Collector may distrain where persons are about to remove.

[a] *See* § 35.

Taxes assessed to be a lien on real property.

§ 38. Every collector of the territorial or county taxes who shall sell any real estate to satisfy any tax imposed by lawful authority, shall execute to the purchaser or purchasers thereof, a deed of conveyance immediately, which deed shall be good and effectual both in law and equity; and in every such deed, the collector making the same shall recite, that the real estate thereby conveyed, was sold for taxes, and the consideration; but no deed given in manner aforesaid, shall be recorded until the expiration of one year from the date thereof, but may nevertheless be proved; and if the person whose estate may have been sold and conveyed as aforesaid, or his or her heirs, executors, or administrators, or his or her agent or attorney, shall within the year tender to the purchaser, his or her heirs, executors, or administrators, or his or her agent or attorney, or in case of his, her, or their absence from the territory, then to the collector of the taxes, who sold and conveyed such real estate, the consideration money paid for the same, and amount of all subsequent taxes that shall have been paid on such real estate, with interest thereon from the dates of such payments, at the rate as stipulated in the eleventh section of this act,[2] until such tender be made, the deed given for such real estate thus sold and conveyed shall be thereby vacated and made void, and the deed be given up.

Ib. Sec. 20. Collector to make a deed for real estate sold.

Deed not to be recorded under one year.

Estate redeemable.

§ 39. When the time shall have expired within which the lists of taxable property are to be received, it shall be the duty of the assessor of taxes to ascertain whether there be any lands or town lots within his county, sold under the authority of the United States, previous to

1827—(19) *Sec.* 8. Lands and lots sold previous to the first Sept. 1819, not given in, to be doubly taxed.

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[1] Although the taxes imposed by this act (1815—(15,)) have been abolished by the various revenue laws passed from time to time, the provisions of this section are conceived to be of a permanent nature, and to apply to collections under the existing revenue laws, however modified. It is to be observed that the latter clause giving a lien on real property from the first day of January, is in accordance with a previous section of the act, which rendered the owners or possessors of property on the first day of January, liable for the taxes of that year. Hence, if applicable to the present law, the reason and intention of the enactment, would create a lien only from the first day of March.—See § 15.

[2] The rate of interest here alluded to has been repealed. It is now fixed at twenty-five per centum per annum.—See § 42.

the first day of September, one thousand eight hundred and nineteen, which have not been assessed; and in case any such be found, which have not been forfeited, he shall assess the same according to the rate of assessment prescribed by law on town lots and lands, for which a complete title has been obtained, and such lots or lands shall be doubly taxed.

Ib. Sec. 9. Where title is incomplete, and other property cannot be found, premises may be rented.

[a] *See* § 35.

Terms of rent, and quantity to be rented.

Owner's right of entry.

Overplus of rent.

§ 40. The collectors of taxes in the several counties shall, at the time and in the manner prescribed by law,[a] make distress and sale of the goods and chattels, lands and tenements of all delinquents, in making returns of taxable property, or in payment of taxes; and in cases of taxes assessed in the manner directed in the preceding section, on lands or town lots, to which a complete title has not been obtained, and in which other property sufficient to satisfy the taxes due, together with all costs and charges accruing thereon, cannot be found, it is hereby expressly made the duty of the respective collectors of taxes to give notice by advertisement at the door of the court-house of the proper county, and at two other public places within the county, that on a certain day (which shall be at least thirty days after the date of said advertisement,) he shall, at the court-house of his county, offer for rent the town lot or lots, or so much of the land or lots, (as the case may be,) and for such term, as may be necessary to satisfy the taxes due, and costs and charges thereon; and he shall accordingly offer for rent, to the highest bidder, until the first day of January succeeding the January immediately ensuing, the town lot or lots, or such portion of the lands, (as the case may be,) and he may designate, beginning in the case of lands with ten acres, or with as much less than ten acres as may be necessary to pay said tax and costs; or by adding ten acres thereto, as often as may be necessary to obtain by such rent, a sufficient sum to satisfy the taxes and costs; and in case the town lot or lots, or lands, cannot be rented for a sufficient sum on the terms aforesaid, they shall be offered for two years, from the first day of January immediately ensuing, or until a complete title to the same shall be produced, or the same shall be forfeited to the United States: *Provided*, That the production of a complete title shall, in every case aforesaid, entitle the owner to the possession of the premises, upon reimbursing the amount paid for taxes, and charges thereon, to the party by whom such payment has been made, and saving to the occupant the crop which may be on the premises; and should the rent in any case exceed the amount of taxes and charges, the right owner of the town lot or lots, or land, (as the case may be,) shall be entitled to receive the overplus.

Ib. Sec. 10. Collector to convey use to party renting. Fee therefor two dollars.

Tenant in possession, when guilty of a forcible detainer.

§ 41. The collectors of taxes, respectively shall, by an instrument of writing, convey to the party renting the premises as aforesaid, the use thereof for and during the time for which they were rented; and shall, in addition to the compensation allowed by law, be entitled to receive two dollars for executing every such instrument of writing; and such instrument conveying the use of the premises as aforesaid, shall be good and sufficient both in law and equity: *Provided*, That whenever the collector shall find the tenant in possession, who may refuse to pay tax, or render possession of the premises, which may be thus taxed and unpaid, he shall have full power to proceed *instanter* in the same manner as is or may be authorized in cases of forcible entry and detainer; and the refusal of the tenant in possession, to render peaceable possession of the premises on demand, shall be considered as evidence of forcible detainer.

Ib. Sec. 11. Collectors to convey

§ 42. The tax-collector shall be authorized, and he is hereby required, to convey by deed any land he may sell under the provisions of this act, when a complete title has been obtained: *Provided,* The owner or owners of any lands sold for taxes, may redeem the same at any time within twelve months, by the proper owner or owners, or their agents, paying the amount of taxes and costs paid by the purchaser, with interest at the rate of twenty-five per centum per annum, from the day of sale until said redemption, and costs.

where title is complete. Owner's right of redemption.

§ 43. Where any collector shall have advertised for sale any lands or tenements to raise the taxes due, and the lands or tenements thus advertised could not be sold for want of bidders, he may adjourn any such sale from time to time, until the same shall be sold; and any sale made on any adjourned day, shall be valid, to all intents and purposes, as if the same had been made on the day mentioned in the advertisement.

1811—(9) *Sec.* 4. Collector may adjourn sale when necessary, for want of bidders.

§ 44. The assessor shall make out three copies of his assessment, one of which he shall retain for his own use, one to be transmitted by him to the comptroller, on or before the first day of September, and one to be filed with the clerk of the county court. The copy for the comptroller, shall first be submitted by the assessor to said county court clerk, to be compared, who shall certify thereon, that the said copy has been duly compared with, and is a correct duplicate of that filed in his office. Any assessor failing to comply with the requisitions of this act, shall forfeit and pay the sum of one thousand dollars, recoverable in any court having competent jurisdiction; one half to the person suing for the same, and the other half to the use of the state.

1821—(34) *Sec.* 7. Assessor to to make three copieis of assessment.

§ 45. Any assessor of taxes, who shall fail to return his tax-list to the office of the comptroller of public accounts, on or before the time he is by law required, shall forfeit to the state the sum of one thousand dollars; and the comptroller's certificate of such failure, directed to the sheriff of the county wherein it may happen, shall have the force and effect of an execution, and the sheriff shall proceed to distrain and sell in the manner provided by law for the collection of the state and county taxes, any goods, chattels, lands or tenements belonging to the assessor or his securities, and shall account to the comptroller for the same, within three months after said certificate came into his hands, or be liable in the same manner as for failing to pay over moneys collected on execution; and in case the said assessor shall fail to forward his tax-list within one month after the first failure happened, he shall forfeit the additional sum of one thousand dollars, to be collected in the manner pointed out in the foregoing part of this section; and a like forfeiture for each succeeding month during which he may be a defaulter; which sum shall be recoverable on motion of the comptroller before the circuit court of Tuscaloosa county, made by the attorney general against such defaulting assessor and his securities; which motion shall be made at the first term after such failure by any assessor: *Provided,* That the comptroller shall give to such delinquent assessor and his securities, at least thirty days' notice, by advertisement in some newspaper printed in Tuscaloosa; and he shall moreover give to such assessor and his securities notice in writing, which shall be directed to them separately by mail, and which notice shall be deposited in the post-office at Tuscaloosa, at least thirty days previous to the time of making such motion.[1]

1829—(7) *Sec.* 3. Penalty of 1000 dollars on assessor, for not returning tax-list. Collected on comptroller's certificate.

Additional penalty of 1000 dollars for not returning within one month. Same penalty to accrue for every month he continues delinquent. Collected by motion in circuit court, in Tuscaloosa county. Assessor and securities, how notified by comptroller.

§ 46. If any assessor and collector shall make any false return of any list of taxable property, with a view to defraud the state or coun-

1821—(34) *Sec.* 12. Penalty on assessor for making a false and fraudulent return.

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[1] For the mode of proceeding against tax-collectors, who fail to make payment of the revenue collected,—See "Financial Department,"—§ 17, &c.

ty of the revenue, he shall forfeit and pay double the amount of the sum, which it was his duty to have returned; and shall moreover be liable to a prosecution for fraud, and on conviction thereof, shall be imprisoned not less than three months, by the verdict of a jury, and shall for ever thereafter be rendered incapable of holding any office of profit, honor, or trust, within this state.

1815—(15) *Sec.* 13. County court to be held 2d Monday in September, to certify insolvencies, and relieve against improper assessments. Auditor to suspend proceedings when land is advertised for sale.

§ 47. The justices of the quorum in each county shall, on the second Monday in September, in each year, hold at their court-houses respectively, a special court for the purpose of examining the amount of insolvencies that may be returned by the collectors of their respective counties, and shall certify such allowance as to them may seem fair and just, to the auditor of public accounts, who shall allow the same so certified to the collector, in a settlement of his account. The said court shall further have power to grant relief to such persons as may have been improperly taxed or over-taxed by the assessor, and upon certifying the same, as in the case of insolvencies, the auditor of public accounts, shall allow the same to the collector in settlement of his account. And if any person to whom relief may be granted in the manner aforesaid, shall not have paid the same to the collector, he shall be exonerated from the same; and if he shall have paid them, the collector shall refund the same amount to him; and the auditor at the time of settlement with the collectors respectively, shall suspend any proceedings against any collector, for any amount of taxes due on lands that may be then advertised for sale, until after such day of sale.

1811—(9) *Sec.* 1. Where such court is not holden, &c, auditor may make allowances on proof.

§ 48. When the special court directed by the thirteenth section of the act entitled "An Act to raise a revenue,"[1] may not have been held in any county, or from any other cause the collector may not have had his list of insolvencies allowed and certified, the auditor of public accounts is authorized and required to allow to the collector of such county, for all such delinquencies as shall be made satisfactorily to appear to him ought to have been allowed by such court.

Ib. Sec. 3. Court failing, next court to certify, but not a second list of insolvencies.

§ 49. If the justices of any county court shall fail to hold a court as directed above, it shall be the duty of the next county court of such county, to make such allowance to the collector, as he may make appear to be reasonable and just: *Provided,* That the county court shall not certify any account of insolvencies to any collector who may already have had one list of insolvencies certified.

Ib. Sec. 4. Auditor to make allowance for improper assessments. Indulgence to collector when land cannot be sold for want of bidders.

§ 50. The auditor of public accounts is required to make an allowance to any collector of the revenue for any moneys with which he may stand charged, and which may be made satisfactorily to appear were improperly assessed; and when any collector may use due diligence to collect the tax due from any person or persons, by exposing for sale, his, her, or their lands or tenements, and the same shall not have been sold for want of bidders, such collector shall not be bound to account for the same, until he may have collected the same.

1823—(28) *Sec.* 1. Assessors' and collectors' compensation.

§ 51. The assessors and tax-collectors of this state, excepting in the counties hereinafter named, shall receive the following compensation for assessing, collecting, and accounting for the taxes by them collected, to wit: twenty per cent. on the first four hundred dollars; ten per cent. on the next six hundred dollars; six per cent. on the next thousand dollars; five per cent. on the next thousand dollars; and three per cent. on all sums over three thousand dollars; and five per cent. for collecting the county tax: *Provided,* That the tax-collectors for the counties of Pike, Henry, Covington, Shelby, St. Clair, Pickens, Marion, Blount, Jackson and Walker, shall receive [a]twenty-five per cent. on the first four hundred dollars collected, and in proportion for a smaller sum; twelve per cent. on all sums over four hundred dollars, and not exceeding one thousand; seven per cent. on all sums over one thousand dollars, and not exceeding two thousand; six per cent. on all sums over two thousand dollars, and not exceeding three thousand; three per cent. on all sums over three thousand dollars; and five per cent. for collecting and paying over the county tax, [b]which last rate of compensation shall also be allowed the assessor and collector of Fayette county for assessing, collecting, and accounting for the state tax, and ten per cent. for collecting and accounting for the county tax: *Provided*, That the tax collector shall retain the per cent. attached to the sums respectively, for all amounts collected.

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[1] The act referred to, was an act passed Dec. 18, 1809. It was repealed in 1815; but the 13th section, so far as it is general, is re-enacted in the 13th section of the preceding act, (see § 47,) with a change only of the time of holding the courts, from the last Monday in July, to the second Monday in September.

Rate in certain counties.
[a 1821—(34) *Sec.* 8.]
[b January 12, 1827.]
Commissions to be retained.

§ **52.** If the person appointed to assess and collect the taxes should die, or otherwise be disqualified from performing the whole duties assigned to him, the duties performed by the assessors and collectors shall be paid in proportion to the labor performed by each respectively. (1)

1821—(34) *Sec.* 17.
Partial duties performed by assessor, to be paid in proportion.

Returns and Payments by Clerks.

§ **53.** If any clerk shall fail to pay the money arising from the tavern licenses by him issued, four weeks before the time the collector is required to settle his accounts at the treasury, he shall forfeit and pay double the amount of the tavern licenses by him collected; to be recovered by the collector before any court having jurisdiction thereof, and paid over by him to the state.[c]

Ib. Sec. 18.
Penalty on clerk for failing to pay money for licenses.
c *See* § 8.

§ **54.** It shall be the duty of the clerk of the county court in each county, to render, on or before the first Monday in November in each year, to the assessor and tax-collector of his county, a statement on oath of the amount of all the licenses granted by the county court, from which any revenue may have accrued to the state, together with the amount of all the licenses granted by himself to hawkers and pedlers, from the time of giving in the same on the preceding year, up to the said first Monday in November.

1826—(29) *Sec.* 1.
Clerks to render to assessor and collector a statement of licenses granted,

§ **55.** The clerks aforesaid shall transmit to the comptroller of public accounts a duplicate of the statement furnished the assessor and collector, certified by the judge of the county court, (whose duty it shall be to certify the same,) on or before the third Monday in November, in each year.

Ib. Sec. 2.
and transmit to the comptroller a certified duplicate thereof.

§ **56.** The statement so furnished the assessor and collector shall have the force of an execution, and the property of all kinds, both real and personal, of the clerk and his securities, shall be liable for the same, in case of failure to pay the amount due thereon.

Ib. Sec. 3.
Statement to have force of execution.

§ **57.** Any clerk failing to render such statement to the assessor and collector, at the time and in the manner prescribed by the second section of this act, shall forfeit and pay for every such failure, the sum of five hundred dollars, to be levied and collected in the manner provided by law for the collection of the state and county taxes.

Ib. Sec. 4.
Penalty for failing to render statement.

§ **58.** If the clerk shall fail to furnish the comptroller with a duplicate of the statement aforesaid, on or before the time, and in the manner prescribed by the second section of this act, he shall forfeit and pay for each failure, the sum of five hundred dollars, to be levied and collected in the manner provided by law, for the collection of the

Ib. Sec. 5.
Penalty for failing to transmit duplicate.

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(1) Various points respecting tax-collectors decided. Armstrong and Pinkston *v.* the State. *Min. Rep.* 160. Wheat et al. *v.* the State, *ib.* 199.

state and county taxes, and the certificate of the comptroller, of such failure, shall be sufficient evidence to authorize the assessor and collector to distrain and sell the property, real and personal, of the clerk, and his securities, for the amount of the forfeiture aforesaid.

Ib. Sec. 6. Compensation to assessor for collecting the forfeitures.

§ 59. The assessor and collector shall receive the same commissions on all moneys collected by him under the authority of this act, as he is entitled to receive on the collection of the state and county taxes, and he shall pay the same over to the state and county treasuries at the time he is required by law in the case of other taxes, and the same proceedings may be had against him to recover the amount due, as in the case of other taxes.

Importers of Goods.

1821—(13) *Sec.* 1. Nonresident importers of goods subject to the same tax as residents.

§ 60. All persons not resident citizens of the state of Alabama, bringing in, or importing, goods, wares, merchandise, or other commodities for sale, shall, when the same are sold, pay such state, county, city, or town tax on the same, as persons residing in this state are now compelled by law to pay, unless the same be placed in the hands of an auctioneer for sale, and be afterwards sold by him.

Ib. Sec. 2. Importers to give in estimate on oath; and pay to clerk of county court the tax due, or enter into bond therefor.

§ 61. All persons bringing in or importing goods, wares, or merchandise, or other commodities as aforesaid, shall, previous to making sale thereof, by themselves or agent, deliver in, under oath, an estimate of the amount of value of all such goods, wares, or merchandise as he or they may bring in or import into the said port, subject to taxation by the existing laws, and pay over to the clerks of the county courts of the counties in which the said ports may be, the said state, county, or city tax on the same, or enter into bond in a sufficient sum with good and sufficient security, payable to the chief justice of the county into which the same shall be brought, conditioned that he or they will well and truly pay and satisfy such state, county, or city tax, as persons residing in the state of Alabama, for all goods, wares, or merchandise, or other commodities they may actually sell, are now compelled to pay by law, on all similar sales of goods, wares, or merchandise, &c., which said clerk shall, where the amount of taxes shall be paid, pay the same over to the persons authorized by law to collect the said state, county, or city tax. And when bond and security shall be given, he shall place the same in the hands of proper officers for collection; and the amount thereof, when by him received, shall be paid over in manner above directed.

Clerk to collect and pay over.

Ib. Sec. 3. Clerks to keep a record of their proceedings under this act. Clerk's compensation. Clerk failing to perform his duty, judge may appoint some other person.

§ 62. The said clerks shall keep a book, in which they shall make regular entries of their proceedings, and publish once in every three months an estimate of all the taxes paid, together with the names of the persons who shall have paid the same, and they shall receive as compensation for their services in taking bond as aforesaid, the sum of fifty cents, and such per centum on all collections as is allowed by law for collecting the state, county, or city tax; and should the said clerks refuse to perform the services required of them by this act, the chief justice of the county where such refusal shall take place, shall forthwith appoint some fit person to perform said duties, who shall take and subscribe an oath faithfully to perform the services enjoined on them by this act; and enter into bond with sufficient security, and in a sufficient sum, to ensure the correct discharge of the aforesaid duties, which bond shall be made payable to the chief justice making said appointment. And should the condition of any of the bonds provided for, and ordered to be taken by this act, be violated, prosecutions shall be forthwith instituted, and carried on to final judgment and execution in the name of the chief justice, to whom the same shall be given, and against the person or persons contravening the same.

§ 63. Every person contravening the provisions of this act shall forfeit and pay the sum of one hundred dollars, for each offence, to be recovered in any court having competent jurisdiction of the same, one half to the use of the informer or person suing for the same, and the other half to the use of the county where the offence may be committed.

Ib. Sec. 4. Penalty for violating this act.

§ 64. It shall be the duty of all owners, consignees, or masters of vessels, before he or they shall sell, barter or exchange, or attempt to sell, barter or exchange, in the city of Mobile, any goods, wares, or merchandise, or other commodity or commodities from on board of any ship or vessel, arriving at the port of Mobile, from parts beyond seas, or from the wharves of said city, to make return to the assessor and collector of taxes for the county of Mobile, whenever required by him, of the whole of the goods, wares, and merchandise, or other commodities imported by him, her or them respectively, and intended for sale, barter and exchange, from on board of such vessels, or from the wharves of said city; and moreover, whenever so required by him, shall make just and faithful return of all his, her or their sales, and pay over at the same time, to said assessor and collector, the same tax on the amount of his, her or their sales, which is now paid by resident citizens of this state, under the penalty for every failure, neglect or refusal so to do, of one hundred dollars, to be recovered in the name and for the use of this state, before any court having competent jurisdiction thereof: *Provided*, That nothing in this act shall be so construed, as to prevent auctioneers from selling at private sale their own goods, subject however to the same taxes as are now allowed by law, nor shall it apply to the sales of executors and administrators, sheriffs and constables: *Provided*, Nothing in this act shall be so construed as to impose a tax upon any articles sold by boats trading up and down any river in this state.

1828—(41) *Sec.* 3. Owners, &c., of vessels arriving at the port of Mobile, to return to tax collector when required, all goods, &c., imported, and make return of sales. Penalty. Auctioneers may sell their own goods at private sale. Proviso as to boats.

Auction Duties.

§ 65. Nothing in this act [1](*to regulate sales at auction*) contained, shall extend to any sale or sales by auction of goods, wares, or merchandise, made pursuant to or in execution of any rule, order, decree, sentence or judgment of any court of the Alabama territory, or made in virtue of any distress by law, or in consequence of any bankruptcy or insolvency pursuant to any law concerning bankruptcies or insolvencies, or made in consequence of any general assignment of property and effects for the benefit of creditors, or made by or on behalf of executors or administrators, or made pursuant to the directions of any law of the Alabama territory touching the collection of any tax or duty, or disposal by auction of public property of the United States or of the Alabama territory, nor to any such sale or sales by auction of ships or vessels, their tackle, apparel and furniture, or the cargoes thereof, which shall be wrecked or stranded within the Alabama territory, and sold for the benefit of the insurers or proprietors thereof.

1818—(16) *Sec.* 1. Certain sales at auction exempt from the payment of duties.

§ 66. All goods, wares, and merchandise, which may be sold by the public auctioneers in the several counties of this state at private sale, shall be subject to the payment of the same tax, as if the same were sold at

1828—(41) *Sec.* 1. Private auction sales subject to the same tax as public.

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[1] See title "Auctioneers,"—§ 1, 6, 7, 8, 9.

public auction, which tax shall be levied, collected and paid over by the several assessors and collectors of taxes, in the manner now provided by law for the collection of other taxes.

1829—(7) *Sec.* 1. Auctioneers to make return of sales yearly to comptroller on oath, to 1st November. How sworn to.

§ 67. It shall be the duty of every auctioneer to make out and forward to the comptroller of public accounts, on or before the second Monday in December in each year, a correct statement of the amount of all sales made by him at auction, subject to duties, during the twelve months immediately preceding the first day of November of the year in which such statement is made; which statement shall be accompanied by the affidavit of the auctioneer, his clerk or agent, sworn to before the judge of the county court, or in his absence, before any justice of the peace of the county in which he resides, that the statement is a correct duplicate of the one furnished the tax collector.

Ib. Sec. 2. Forfeiture for not furnishing statement. How levied.

§ 68. On failure of any auctioneer to furnish the statement aforesaid at or before the time required by the first section of this act, he shall forfeit and pay for the use of the state, the sum of one thousand dollars, to be levied and collected by the tax-collector in the manner provided by law for the collection of the state and county taxes, and the certificate of such failure by the comptroller of public accounts, shall have the force and effect of an execution, and the tax-collector shall distrain and sell any real or personal property belonging to the said auctioneer or his securities, which may be necessary to satisfy the forfeiture aforesaid, and the same shall be accounted for by the tax-collector, as other taxes.

County Taxes.

1809—(9) *Sec.* 1. Surpluses of county taxes raised for special purposes, to be applied to general county purposes.

§ 69. All surpluses of money due from any collector of any special county tax, under any law providing for a county tax for a special purpose, after a full payment of all appropriations arising under such law, shall be for general county purposes, and shall by the collector be paid over to the county treasurer of the proper county; and on failure to do so, the county treasurer of the proper county shall have the same mode of recovering any surplus arising as aforesaid, as is given him against collectors of general county taxes.

1812—(7) *Sec.* 1. County court authorized to lay a county tax. Not to exceed half of state tax. How levied and collected.

§ 70. The county courts[1] at their first or second term after the first day of January in each year, shall, according to the demands of their respective counties, be authorized to lay a tax upon the same property and objects, as are subject to territorial taxes according to the assessment for that year: *Provided,* That the county tax shall not exceed upon each particular article or object, one half of the territorial tax. And the county tax shall be levied and collected by the tax-collector, at the same time, and in the same manner as the territorial tax, and shall be paid by the collector into the hands of the county treasurer, at the same time, as the territorial taxes are required to be paid into the hands of the territorial treasurer, and shall be in all respects under the same regulations and restrictions, which by law are provided for the due collection and payment of the territorial tax.

Ib. Sec. 4. Court to direct appropriations.

§ 71. It shall be the duty of the county courts to direct the appropriation of the money which may come into the county treasury.

Ib. Sec. 6. Funds, how appropriated.

§ 72. The county courts shall not appropriate the funds of their counties to any objects, but such as are contemplated by law.

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[1] The judge of the county court and commissioners of revenue and roads. See "Commissioners," &c.,—§ 1.

§ 73. Where any tax-collector has returned any delinquent, it shall be the duty of such tax-collector, or his successor, (if in his power afterwards,) to collect the tax of such delinquents, and make return thereof at the same time as above provided.

Ib. Sec. 7. Tax-collector's duty as to delinquents.

§ 74. For the purpose of providing a fund to defray county expenses, the sum of two dollars shall be taxed in the bill of costs, on all suits hereafter to be commenced in this territory, and shall be assessed and collected at the same time and in the same manner as other costs of suits, and paid immediately after collection into the county treasury of the county wherein such suit was instituted.

1815—(5) *Sec.* 3. Tax of two dollars imposed on all suits.

§ 75. It shall be lawful for the judge of the county court, and commissioners of roads and revenue in any county in this state, to direct the collector of the taxes to collect any current money circulating in their counties, in payment of county taxes, and the collectors shall collect according to such direction.

1821—(34) *Sec.* 20. County court may instruct collector what kind of money to receive.

§ 76. If any collector of taxes in this state, shall fail to collect and pay over the county tax within the time prescribed by law, it shall be the duty of the judge of the county court, to hold a special court to try such delinquent collector: and if it shall appear that he has so failed to collect or pay over such county tax, it shall be the duty of the judge, on motion of the county treasurer, to enter up judgment against such collector, and his security or securities in office, for the amount of said county tax so due and unpaid, together with fifteen per centum as damages on the amount: *Provided however*, That ten days' notice at least shall be given to such delinquent collector, and his security or securities. (1)

1822—(32) *Sec.* 1. Proceedings against collectors for failing to collect or pay over the county tax.

Damages.

Notice.

TREASURERS—State and County.

Note.—The duties of state and county treasurer, although totally independent of each other, are so blended in some of the earlier acts, that it is now impossible to separate them without remodelling all the laws by which they are defined. Hence they are united under the same title. For the *county treasurer's* appointment, bond, and term of office,—See "County Officers."

§ 1. A STATE treasurer shall be annually elected, by joint vote of both houses of the general sasembly.

Con. Ala. Art. 4, *Sec.* 23.

§ 2. The state treasurer shall perform the duties and be subject to the responsibilities heretofore appertaining to the office of territorial treasurer.

State treasurer's appointment. 1819—(9) *Sec.* 6.

§ 3. The territorial treasurer shall keep his office at the place designated by law for the sitting of the general assembly; and shall, prior to entering on the duties of his office, take and subscribe an oath of office, and give bond, [a]with at least two good and sufficient securities, payable to the governor for the time being, and his successors in office, in the penalty of [b]one hundred thousand dollars.

Duties and responsibilities. 1803—(8) *Sec.* 1. Office at seat of government. [a 1811—(14) *Sec.* 1.] [b 1823—(37) *Sec.* 2.] Bond.

§ 4. The condition of the territorial treasurer's bond shall be in the words, or to the effect following, to wit: "The condition of this obligation is such, that if the above bounden shall from time to time, and at all times, render a just and true account to the legislature of the Mississippi territory, when by them thereunto required, of all the moneys, securities, stock, and other property of

Ib. Sec. 2. Condition of the state treasurer's bond.

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(1) A motion in the name of the state will not lie against a tax-collector, for failing to pay over the county tax. (It should be in the name of the obligee in the bond, or his suceessor.) Mayberry et al. *v.* The State, 1 *Stewt. Rep.* 266.

the said territory, which shall come to his hands, or be committed to his charge; and deliver the moneys, securities, stock, and other property of the said territory, in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of the said territory, to his successor in office; and shall well, honestly, and faithfully perform all the duties of his office; and shall answer for all improper appropriations, waste, embezzlement, or destruction of the said moneys, securities, stock, property, documents, instruments of writing, papers, or books, which shall be done or committed by any person or persons, to be by him employed in the said office: then this obligation to be void, otherwise to be and remain in full force and virtue." Which bond shall be executed before the governor, and with the oath thereon endorsed, filed in the office of the territorial secretary.

To be filed in secretary of state's office.

Ib. Sec. 1 & 3 *consolidated.* County treasurer's bond.

§ 5. The county treasury's bond shall be made payable in like manner, and the condition thereof shall be the same as that of the bond of the territorial treasurer; changing therein the words "Legislature of the Mississippi territory" into "county court," and the word "territory" into "county."

Ib. Sec. 4. Adjustment of accounts when out of office.

§ 6. If any treasurer die, resign, be discharged, or cease to hold his office; then such treasurer, or if he be dead, his heirs, executors, or administrators, shall fairly and regularly state the account, and deliver the moneys, securities, stock, property, instruments of writing, and books, of the territory or county, in his possession, to the succeeding treasurer; who, if a territorial treasurer, shall make report thereon to the legislature; or if a county treasurer, to the county court: and the said report, if confirmed by the legislature or county court, shall be a discharge of the late treasurer's bond; which in such case shall be delivered to the said treasurer, or his heirs, executors, or administrators.

Ib. Sec. 5. General duties of treasurers.

§ 7. It shall be the duty of the said treasurers to receive and keep the moneys of the territory or county, for which they are appointed; to disburse the same agreeably to law, and take receipts for all moneys which they shall pay; to keep accounts of the receipts and expenditures of the public money, and in case of county treasurers, to keep accounts of all debts due to or from the counties respectively, for which they are treasurers; and direct prosecutions for debts that are or shall be due to the county, for which they are appointed. And for this purpose they shall be furnished by the clerks of the several courts of justice respectively, once in every year, with authenticated extracts from the records and dockets of their respective courts, of all fines, forfeitures, amercements, judgments, and orders entered into such courts, whereby moneys may be accruing or arising to the use of the counties respectively. And if any clerk as aforesaid, shall neglect his duty herein, he shall be liable to pay a fine to the use of the county, in the discretion of the court where tried, not exceeding two hundred dollars, to be levied by complaint of any county treasurer, or of any attorney general, and on conviction thereof had in any court of competent jurisdiction.

County treasurers to be furnished by clerks annually with abstracts of fines, &c.

Penalty on clerks for not furnishing, &c.

Ib. Sec. 6. Territorial treasurer to make reports to the legislature or governor, on matters referred, and an annual report on the finances.

§ 8. It shall be the duty of the territorial treasurer to make reports and give information to the legislature of this territory: or in their recess, to the governor, in person, or in writing, as he may be required, respecting all matters referred to him, or which shall in anywise appertain to his office; and generally to perform all such services relative to the finances as he shall be directed to perform. And it shall moreover be his duty to prepare and lay before the general assembly, at the commencement of each annual session thereof, a report on the subject of finance, containing estimates of the public revenue and public expenditures, for the purpose of giving information to the general assembly, in adopting modes for raising the money requisite to meet the public expenditures.

§ 9. It shall be the duty of the county treasurers respectively, to make reports, and give information to the county courts of the counties wherein they are appointed, in person, when thereunto required, respecting all matters in anywise belonging to their offices, and generally to perform all such services relative to the finances of the counties, as they shall be directed to perform.

Ib. Sec. 7. County treasurer to report, in person, when required.

§ 10. It shall be the duty of the said treasurers, and each of them, to state in fair books, the amount of moneys which they shall receive for taxes, impositions, debts, fines, penalties, forfeitures, or any other account whatsoever, for, or in behalf of this territory, or of the county in which they are respectively appointed; and which they shall pay in pursuance of acts of the legislature, in such manner that the net produce of the whole revenue, as well as every branch thereof, and the amount of disbursements, in payment of the several demands, may distinctly appear; and the territorial treasurer shall, from time to time, lay the same, and all other his proceedings, relative to his office, before the legislature: and each of the county treasurers shall, in like manner, lay the same, from time to time, and all other their proceedings, relative to their office, before the county court of the county wherein they are appointed.

Ib. Sec. 8. Treasurers' account, how to be kept.

§ 11. The county treasurers are hereby empowered and required to examine the accounts, dockets, and records of the clerks and sheriffs of their counties, for the purpose of ascertaining whether any moneys, of right belonging to such county, may be in their hands, and to use all lawful ways and means to recover the same.

1811—(14) *Sec.* 3. County treasurer to examine accounts, dockets, &c., of clerks and sheriffs.

§ 12. The treasurer of this state is hereby appointed an agent on the part of the state of Alabama, to receive of the treasurer of the United States, or from such person or persons as may be appointed for that purpose, the whole, or any part of the three per cent. of the net proceeds of sales of lands made in this state, since the first day of September, eighteen hundred and nineteen.

1822—(31) *Sec.* 1. State treasurer appointed agent to receive the 3 per cent. fund.

§ 13. The treasurer of this state is authorized and required, to give a receipt or receipts, as treasurer, for so much of said fund as may be by him received; and the receipt or receipts so given, shall be binding on this state for the amount so received.

Ib. Sec. 2. Treasurer's receipt binding on the state.

§ 14. The county treasurers of the respective counties, shall receive all claims which may be presented by any person or persons against the county, and which have been duly authenticated according to law, and record the same in a well bound book, to be kept by them for that purpose, noting particularly the day on which the same was presented; and shall in like manner keep a record of all claims which they may pay and discharge, noting particularly the day on which they were respectively paid.

1826—(32) *Sec.* 1. County treasurer to keep a registry of claims against the county, as presented, or paid.

§ 15. The county treasurers shall pay the claims due from the counties respectively, agreeably to the order in which they stand recorded, and not otherwise.

Ib. Sec. 2. Claims paid in order of registration.

§ 16. It shall be the duty of the judges of the several county courts, to appoint three fit persons, once in each year, to examine the books and vouchers of the county treasurers, and report the situation of the same, accompanied with a statement of all the claims which have been filed, and also all claims which have been paid off by said treasurers.

Ib. Sec. 3. County court to appoint examiners of treasurers' books, &c., annually.

§ 17. If any county treasurer shall fail to comply with the duties required by this act, he shall be fined in a sum not less than one hundred dollars, recoverable in any court having competent jurisdiction,

Ib. Sec. 4. Penalty for neglect of duty.

one half to the use of any person or persons suing for the same, and the other half for the use of the proper county.

Ib. Sec. 5.
County treasurers' compensation.

§ 18. The county treasurers shall receive from time to time for their services such compensation as shall be allowed by the judge of the county court and commissioners of roads and revenue, not exceeding five per cent. upon the moneys which they may pay out.

1829—(14)
Sec. 3.
Who ineligible.

§ 19. No person shall at the same time hold the office of clerk of the county or circuit court and of county treasurer, or of sheriff and of county treasurer.

1830—(19)
Sec. 1.
County treasurers to settle their accounts annually.
Account to be recorded and posted up.

§ 20. It shall be the duty of each treasurer of the several counties in this state, to settle his accounts annually with the judge of the county court and commissioners of roads and revenue of his county, which settlement shall set forth every item of receipt and expenditure of said county; and the said account shall be certified to by the judge and at least two of the commissioners, and shall be recorded in the county court of said county; and it shall be the duty of the treasurer to post a copy of said account on the court-house door, or some secure place therein, at least once a year.

Ib. Sec. 2.
Penalty for failure.

How recovered.

§ 21. If any county treasurer fail to comply with the provisions of this act, he shall forfeit and pay for every such failure, the sum of one hundred dollars, for the use of the county, to be recovered in the name of the judge of the county court of the proper county, on motion in the circuit court of the county where such failure shall take place, on giving said treasurer one day's notice in writing, of such motion, which notice shall be served by the sheriff, coroner, or some constable.

Ib. Sec. 3.
County treasurer failing to pay claim due, liable to judgment on motion.

§ 22. If any county treasurer shall fail or refuse to pay any claim against the treasury which he is bound to pay by law, when there are sufficient funds in the treasury to meet the payment of said claim, judgment may be obtained against said treasurer on motion, (he having had five days' notice thereof,) either in the circuit or county court of the proper county, in the same manner that judgment is obtained against sheriffs and constables for failing to pay over money.

TRESPASS.

1807—(2)
Sec. 6.
Penalty for taking away boat or vessel without leave.

§ 1. EVERY person who without leave of the owner, or other person having the same in care or charge, shall take away any boat or vessel, shall for every such offence, pay ten dollars to the owner thereof, over and above the damages such boat or other vessel shall sustain; and over and above the expense of bringing back such boat or vessel, to be recovered with costs, in any court of record. And when there shall be several offenders in one trespass, every person shall be liable for the whole penalty.

Ib. Sec. 7.
For cutting down, carrying away, or destroying timber on another's land without leave.

§ 2. If any person shall cut down, carry away, or destroy any cypress, white-oak, black walnut, pecan, or cherry tree, upon any lands not his own, without first having the consent of the owner, he shall forfeit and pay the owner thereof, ten dollars for every such tree, so cut, carried away, or destroyed; and for every other tree, so cut, carried away, or destroyed, without leave as aforesaid, the sum of three dollars, except such trees as may be cut, or taken, out of or for the use of public roads.

TRUSTEES.

§ 1. ANY trustee appointed by will or by deed, may be removed by the circuit court of the county in which such trustee resides, or of the county in which the estate of which he or she is trustee shall be; provided such notice as the court shall direct shall have been served on the trustee so to be removed.

1829—(10) Trustees may be removed by the circuit court.

§ 2. Any trustee appointed by will or by deed, may resign his or her trust to the circuit court of the county in which such trustee resides, or in which the estate shall be, upon rendering a full and complete account of the estate and the management thereof; provided that all concerned shall have had due notice of the same, at least thirty days previous thereto.

May resign their trust to the circuit court, giving thirty days' notice.

§ 3. Upon the resignation or removal of any trustee as provided for by this act, the circuit court of the proper county shall have full power and authority to appoint another trustee or trustees in the place of the trustee or trustees so resigning or removed.

Court to fill the vacancy.

§ 4. Any person interested, may petition the circuit court, setting forth that the trustee or trustees have wasted or are about to waste the estate of which he, she, or they are trustees; and it shall thereupon be the duty of the court to cause notice to be given to such trustee or trustees of said petition, and to have summoned such trustee or trustees to answer the same; and if, upon trial before said court, it shall appear that the estate has been wasted, or is likely to be, said court may require bond and security of said trustee or trustees for the faithful management of said estate, and on his, her, or their failure to give such security, shall remove the trustee or trustees from office.

Remedy against trustees for waste.

§ 5. For the prosecution or defence of any suit in any of the courts of this state, the court before whom such suit may be pending, may, on motion, appoint a trustee or trustees to prosecute or defend the same, in all cases where the same may be necessary.

Court may appoint trustee to prosecute or defend suit.

§ 6. All trustees appointed by will or deed shall, once in each year, render to the circuit court of the proper county, an account of the management and situation of the estate, and on failure so to do, shall be removed.

Trustees to make annual report to circuit court, or be removed.

UNIVERSITY.

§ 1. A SEMINARY of learning is hereby established, to be denominated, "The University of the State of Alabama."

1820—(14) University established.

§ 2. Three commissioners shall be appointed by the governor, within each county wherein any of the lands reserved by the United States for a seminary of learning may be situated, who shall enter into bond with sufficient security to the governor, and his successors in office, for the faithful performance of their duty, whose duty it shall be to lease the said lands, which leasing shall be for the term of one year from the first day of January next; and shall be done at public auction, offering the said lands in convenient tracts, and in such way as may be deemed most advantageous to the state, and also giving advertisement in the nearest public paper, of the lands so to be offered, at least two weeks previous to the offering of the same: *Provided*, That no improved land shall lease for a less price than two dollars per acre, for the said term of one year.

Commissioners to be appointed to lease the university lands.

Minimum.

§ 3. The said commissioners are authorized and required, as soon as may be, to employ the county surveyor, or some suitable surveyor,

The improved lands to be surveyed.

to admeasure the improved land as aforesaid, and to make report of the condition of the same, under the direction of said commissioners, to be returned to them with a plat of the said improved lands; the expense to be paid out of the rent of the lands.

Duty of the commissioners.

To prevent waste.

§ 4. It shall be the duty of the commissioners appointed by virtue of the second section of this act, to take bond with sufficient security for every such lease, payable to the governor and his successors in office, and to deposit the same with the comptroller, and to take covenants from the several lessees against the commission of waste, or suffering the same to be committed; and for delivering possession at the expiration of the lease; and it shall also be the duty of the commissioners to visit the several tracts reserved within their counties respectively, at least once in every period of six months, for the purpose of preventing waste or trespasses from being committed; and it shall be their duty to give information of all waste or trespasses on said lands, to the solicitor of the circuit in which such lands shall be, whose duty it shall be to prosecute the same.

Trespass, how punished.

§ 5. Any person or persons who may unlawfully enter upon and destroy any timber or improvements, on any of the lands granted to this state for a seminary of learning, shall, on indictment and conviction, be fined in treble the amount of the damages, to be assessed by a jury, which fine shall be applied to the fund hereinbefore provided for the purposes of the said university.

Ib. Sec. 7.
Rent, how recovered.

§ 6. The same proceeding may be had, and before the same jurisdiction, for enforcing the payment of any of the bonds or securities, that may be taken in virtue of this act, as is authorized by law in the case of defaulting collectors of the public taxes, and it shall be the duty of the officer who prosecutes for the state, for the recovery of the revenue against defaulting collectors, to prosecute for the recovery of the arrears of rent under this act.

Ib. Sec. 8.
Prosecutions under this act.

Fines appropriated.

§ 7. All prosecutions under this act, shall be carried on as other prosecutions, in the name of the State of Alabama; and it shall be the duty of the solicitors of the several circuits, upon information of said commissioners, to prosecute such offenders, and to receive the fines imposed by this act, and pay the same into the public treasury.

1821—(36)
Sec. 1.
Trustees to be elected.
Term of office.
Incorporated.

§ 8. The governor, *ex officio*, together with twelve trustees, two of whom shall be elected from each judicial circuit by joint ballot of both houses of the general assembly, and who shall continue in office for the term of three years, shall constitute a body politic and corporate, in deed and in law, by the name of *The Trustees of the University of Alabama*, and by that name they and their successors shall have perpetual succession, and be able and capable in law, to have, receive, and enjoy, to them and their successors, lands, tenements, and hereditaments, of any kind or value, in fee or for life, or for years, and personal property of any kind whatsoever, and also all sums of money of any amount whatsoever which may be granted or bequeathed to them, for the purpose of promoting the interests of the said university.

Ib. Sec. 4.
Trustees to have a common seal.

Corporate powers.

§ 9. The trustees of the said university shall and may have a common seal for the business of themselves and their successors, with liberty to change or alter the same from time to time, as they shall think proper; and by their aforesaid name, they and their successors shall be able to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts of law and equity within this state; and to grant, bargain, sell, or assign, any lands, tenements, goods, or chattels, in such manner as is hereinafter specified; and to act and to do all things whatsoever for the benefit of the said institution, in as ample a manner as any person, or body politic or corporate, can or may do by law.

§ 10. No misnomer of the University of Alabama shall defeat or annul any gift, grant, devise, or bequest to the same: *Provided*, The true intent of the parties shall sufficiently appear upon the face of the gifts, grants, wills, or other writing, whereby any estate or interest was intended to pass to the said university; nor shall any misuser, or nonuser of the rights, liberties, privileges, jurisdiction, and authorities hereby granted to the said university, create or cause a forfeiture thereof.

Ib. Sec. 5.
Misnomer not to defeat bequests, &c., provided, &c.
Rights not forfeited by misuser or nonuser.

§ 11. The trustees, or so many as shall be fixed on by their by-laws, shall have full power by the principal or professors of the said university, to grant or confer such degree or degrees in the arts or sciences to any of the students of the said university, or persons by them thought worthy, as are usually granted and conferred in other universities in the United States, and to give diplomas or certificates thereof, signed by them and sealed with the common seal of the trustees of the university, to authenticate and perpetuate the memory of such graduation.

Ib. Sec. 6.
Trustees may confer degrees on students and others.
May give diplomas.

§ 12. No person shall be excluded from any liberty, liberties, immunity, office, or situation in said university, on account of his religious persuasion, provided he demean himself in a sober, peaceable, and orderly manner, and conform to the rules and regulations thereof.

Ib. Sec. 7.
No person debarred office, &c., on account of religious persuasion.

§ 13. The governor shall be *ex officio* the president of the board of trustees: *Provided however*, That in case he should not attend the meetings of the said trustees, the trustees shall elect a president *pro tempore*, who shall preside at such meetings.

Ib. Sec. 8.
Governor, president *ex-officio*, but trustees may elect president *pro-tem.*

§ 14. The said trustees shall have power, and it is hereby declared to be their duty, upon a notice from the president of the board, to examine and report to the legislature, at their next session, such place or places, having a due regard to health and the fertility of the surrounding country, as shall appear to them most suitable for the location of the university; and the legislature shall, at the session when such report shall be made, proceed by joint ballot of both houses of the general assembly, to make a choice of the site for the university, which choice, when so made, shall not be subject to any alteration thereafter.

Ib. Sec. 10.
Trustees to report to legislature, site for university.
Legislature to make choice of site.

§ 15. The site thus selected by the legislature, shall be exempted from sale: *Provided*, The same shall have been granted to this state, by an act of the congress of the United States for a seminary of learning; and if the same shall not have been granted to this state as aforesaid, the trustees shall have full power to purchase the site thus selected.

Ib. Sec. 11.
Site reserved from sale,
or may be purchased.

§ 16. The trustees shall have the entire control over the site thus selected for the university, and may lay off and sell such lot or lots to such persons, and upon such conditions, as they may think proper.

Ib. Sec. 12.
Trustees to have entire control of site.

§ 17. The trustees shall, so soon as the selection shall have been made as aforesaid, contract with a suitable person or persons for the erection of such buildings as they may deem necessary, for the purpose of carrying this act into complete effect.

Ib. Sec. 13.
May erect buildings.

18. Every trustee elected or appointed by the provisions of this act shall, before entering on the duties assigned him as trustee, take and subscribe the following oath, before some judge or justice of the peace, to wit: "I, —— ——, do solemnly swear, (or affirm,) that I will faithfully discharge the duties assigned me as trustee, to the best of my skill and ability, without partiality or affection: So help me God."

Ib. Sec. 19.
Trustees to take oath.

Ib. Sec. 20. Trustees to receive and invest proceeds of sales, and report finances to legislature. Capital stock not to be diminished.

§ 19. The proceeds arising from the sales of the said lands,[1] shall be paid over to the trustees, and shall be by them vested in such funds as they may direct: *Provided,* It shall be their duty to report annually to the legislature the financial situation of the institution: *And provided further,* That the capital stock arising from the sale of the lands as aforesaid, shall not be reduced in any manner whatever.

Ib. Sec. 21. Laws for leasing university lands, in force until sold. Lessee's privileges.

§ 20. The laws now in force relative to the leasing of the said lands, shall continue in force until the said lands shall be sold: *Provided,* That if they shall be sold previously to the first day of January, one thousand eight hundred and twenty-three, the lessee shall not be deprived of the benefit of remaining on the same until that time, and of receiving the growing crop.

Ib. Sec. 23. Trustees may contract for buildings, &c.

§ 21. The said trustees shall have the power to contract for the necessary buildings, and to do every other act necessary to carry this act into complete effect.

Ib. Sec. 24. This act to be construed liberally.

§ 22. This act shall be deemed a public act, and judicially taken notice of without special pleading, and the same shall be liberally construed, for fully carrying into effect the beneficial purposes hereby intended.

1822—(14) *Sec.* 2. Vacancies, how filled. Temporary appointments.

§ 23. It shall be the duty of the general assembly to fill all vacancies in the board of trustees, which shall happen by the expiration of the term of service, death, resignation, or otherwise, at the next session after such vacancy shall happen: *Provided,* That should any vacancy happen during the recess of the general assembly, the board of trustees shall have the power to fill the same by an election, which shall continue until vacated by an election to be made by the general assembly, at their next session.

Ib. Sec. 4. Future board of trustees.

§ 24. At the expiration of the term for which the present trustees are elected, the legislature shall proceed to the election of two trustees from each judicial circuit, who, together with the governor, shall form the board of trustees.

Ib. Sec. 5. Stated and occasional meetings. Notice. Proviso.

§ 25. There shall be a stated annual meeting of the trustees, to be held at the time of conferring degrees, and the president of the university, together with two of the trustees, or three of the trustees without the president, shall have full power to call an occasional meeting of the board, whenever it shall appear to them necessary: *Provided,* That reasonable notice by mail or otherwise be first given to all the other trustees, specifying the cause or causes of such meeting: *And provided also,* That no business shall be transacted by the board, other than that specially assigned as the cause of the meeting, unless at least seven of the board shall concur therein.

Ib. Sec. 6. Majority may transact business. May elect and remove officers, and fix their salaries. Permanent elections, when made. Trustees may prescribe course of studies, and enact by-laws.

§ 26. At all meetings of the trustees, a majority shall be capable of doing and transacting all the business and concerns of the university, except such as is herein excepted: they shall have the power of electing all the necessary and customary officers of said institution; of fixing their several salaries, and of removing any of them for neglect or misconduct in office, a majority of the whole number of trustees concurring in said removal: *Provided,* That no permanent election of any officer shall be made, or salary be fixed, at any other than the stated annual meetings of the trustees; but all elections which shall be made at any called meeting, shall expire at the end of the next stated meeting; they shall have the power of prescribing the course of studies to be pursued by the students, and of framing and enacting all such ordinances and by-laws as shall appear to them necessary for the good government of the university, and of their own proceedings: *Provided*, The same be not repugnant to the laws of the United States and of this state.

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[1] The university lands—for which a mode of sale was provided in sections 14, 15, 16 and 17 of this act. These sections are all superseded by the following act of 1822.

§ 27. The head of the said university shall be styled the President, and the instructers, the Professors; and the president and professors, while they remain such, shall not be capable of holding the office of trustee; and the president and professors, or a majority of them, shall be styled "*The Faculty of the University*;" which faculty shall have the power of enforcing the ordinances and by-laws adoped by the trustees for the government of the students, by rewarding or censuring them, and finally by suspending such of them as, after repeated admonitions, shall continue disobedient or refractory, until a determination of the board can be had. And it shall be in the power of a majority of the trustees present, at a stated meeting, to expel any student or students.

Ib. Sec. 7. Style of the president and professors.

May suspend students.

Trustees may expel.

§ 28. The title of the lands which this state has received as a donation from the Congress of the United States, for a seminary of learning, is hereby vested in the said trustees and their successors in office, to be appropriated in the manner hereinafter directed, to wit: the said lands shall be sold at public auction at such times and places as the said trustees shall direct, or have by ordinance heretofore directed, at a price not less than seventeen dollars per acre; one fourth part of the purchase money shall be paid down at the time of sale; one eighth part in one year thereafter, with interest at the rate of six per cent. per annum; one eighth part in two years after said sale, with interest as aforesaid; and the residue of the purchase-money shall be paid at the expiration of eight years after said sale, with interest as aforesaid, payable annually, to commence at the day on which the third payment shall become due: *Provided*, That the said trustees shall have power to lay off town lots at any place they may deem expedient, and to dispose of the same on such terms and under such regulations as they shall prescribe; *Provided*, That the said lots, when so laid off, shall not sell for a less sum than the minimum price herein expressed. And each purchaser shall, moreover, at the time of said purchase, execute his bonds, payable to the said trustees and their successors in office, conditioned for the true and punctual payment of the purchase-money and interest thereon, according to the terms of said sale.

Ib. Sec. 8. Lands vested in the trustees.

To be sold.

Minimum price.

Terms of sale.

Town lots may be laid off.

Purchaser to execute bonds.

§ 29. The said trustees, upon receiving from any purchaser of any tract or parcel of land which may be sold as aforesaid, the one-fourth part of the purchase-money so required to be paid as aforesaid, and the bonds conditioned as aforesaid, duly executed, shall issue to said purchaser, a certificate under the seal of the trustees, that the purchase of such tract of land has been made by the purchaser, that he has paid one fourth part of the purchase-money, and that he has given bonds according to law, and declaring that upon the punctual payment of each and every one of the remaining instalments, with the interest thereon, the amount of each of which shall be specified in such certificate, they will convey such tract of land to such purchaser, his heirs or assigns; and should such purchaser assign such certificate, the assignee shall possess all the rights which may have been vested in his assignor: *Provided*, That the purchaser of any tract of land as aforesaid, his heirs or assigns, shall have the liberty at any time within the period of credit hereinbefore given, if the land shall not have been forfeited, of paying to the said trustees the whole amount of principal and the interest then due upon said purchase; upon which payment, the said trustees shall convey to such purchaser, his heirs or assigns, a title in fee simple to said land.

Ib. Sec. 9. Trustees to issue certificates to purchasers.

Purchasers may pay the whole sum due previous to time specified.

Ib. Sec. 10. Payment not made, land forfeited.

After suit, forfeiture not to accrue until suit fails, &c.

§ 30. Should any purchaser of any tract of land as aforesaid, the heirs or the assignees of such purchaser, fail to make punctual payment of the amount of principal and interest, or of interest which may become due on said tract of land, the said tract of land shall be absolutely forfeited to the said trustees, with the money paid thereon; and the said trustees are authorized, after the expiration of three months from the time of said forfeiture, to dispossess any person or persons who may be in possession of such tract of land, by the writ of unlawful detainer, saving, in every case of a forfeiture, the growing crop to the occupant: *Provided nevertheless*, That if the said trustees shall, within the said period of three months, institute a suit upon the bond given for the said purchase, in that case the said forfeiture shall not accrue until a failure of said suit to coerce the payment of the money due as aforesaid; which failure shall be ascertained by a return of *non est inventus* to a *capias ad respondendum*, or of *nulla bona* to a *fieri facias*.

Ib. Sec. 11. Purchase may be converted into a lease.

Conditions.

§ 31. At the expiration of the term of credit, or within three months thereafter, hereinbefore prescribed, upon the sales of said lands, the purchaser, his heirs or assigns, shall have the right, upon the payment of all interest then due upon said purchase, and upon surrendering up the certificate of purchase, to convert said purchase into a lease for ninety-nine years, renewable for ever, upon condition that the lessee, his heirs, executors, administrators, or assigns, shall pay to the said trustees, interest at six per centum per annum, upon the amount of the original purchase-money due at the time of converting said sale into a lease.

Ib. Sec. 12. Trustees to execute deed of lease.

Deed assignable.

§ 32. Upon the election as aforesaid of any purchaser, his heirs or assigns, of any tract of land sold as aforesaid, to convert said sale into a lease as aforesaid, the said trustees shall execute to such lessee a deed of lease, specifying the terms thereof as aforesaid, which lease shall be assignable by said lessee, and the said assignee shall possess all the rights which may have been vested in his assignor.

Ib. Sec. 13. May distrain for interest on lease.

Personal estate liable for payment of interest, before other debts.

Interest not paid, lease forfeited, and lands to be sold by the trustees.

Overplus, if any, to be paid to lessee.

Lands forfeited, not to be sold for a less sum than is due and unpaid,

§ 33. The said trustees shall for ever have the right to distrain any personal estate belonging to the lessee, his heirs, assigns, or the tenant in possession of any tract of land so leased, for the payment of the interest as it shall become due on said lease, in such manner as shall be prescribed by law; and the personal estate of said lessee, his heirs, assigns, and the tenant in possession, shall always be liable in preference of other debts, for the payment of the interest due on the lease; and upon a failure of payment of the whole, or any part of the interest due on said lease, upon a *distringas* for that purpose to be issued, the lessee, his heirs, or assigns, shall forfeit all right and interest in and to the land so leased, together with all sums of money which may have been paid for the purchase and lease of the same; and all lands thus forfeited, shall be sold by the trustees to the highest bidder, at public auction, for ready money, two months public notice being first given of the time and place of such sale, and after paying the amount due upon the original purchase, together with all interest due to the said trustees, up to the time of sale, with all costs and expenses of sale—the remainder, if any, shall be paid to the lessee, his heirs, executors, administrators or assigns, who may be entitled to receive the same; and the person purchasing according to the provisions of this section, shall inure to all the equity, and be subject to the same rules as are hereinbefore prescribed for original purchasers or lessees: *Provided*, That all land forfeited by a failure of the payment of either the purchase-money or interest, shall never be sold for a less sum than is due and unpaid on said land, agreeably to the terms of the original sale or lease, (as the case may be,) and all forfeited lands which may be offered for sale, and shall not bring the amount due on account of the purchase-money and interest, shall for ever remain the property of the trustees, and their successors in office, subject to the same rules and regulations as other lands belonging to the state university.

but to vest in trustees.

Ib. Sec. 14.
Trustees may rent unsold lands.

§ 34. The said trustees shall have power to rent, from year to year, such part of the lands as shall not be sold at the public sales, as aforesaid, in such manner as they shall by ordinance prescribe, and the moneys which shall be due thereon, shall be recoverable in such manner as shall be prescribed by law.

Ib. Sec. 15.
Sales, by whom superintended.
Trustees may remove, and appoint agents.

§ 35. It shall be the duty of the trustees, whenever a sale of lands is to take place, to appoint three of their own body, who, or any one of whom, together with such other trustees as may attend, shall be superintendents of said sale; and in case there shall be a failure of the agent to attend and conduct the sale, the trustees so attending, shall have power to appoint another agent, and to take his bond and approve of his security; and the board of trustees shall have power at all times, when they may deem it expedient, to remove any agent, and appoint another in his place.

Ib. Sec. 16.
Estate not liable to be taxed.
Exemptions of officers, students, &c.

§ 36. The estate, both real and personal, of the said corporation shall be free and for ever exempt from taxes, and the persons of all officers, servants, and students belonging to said university, shall, during their continuance there, be exempt from taxes, serving on juries, working on roads, and ordinary military duty.

Ib. Sec. 17.
Female institutions to be established.
How governed.
Appropriations limited to 100,000 dollars.

§ 37. There shall also be established three branches of said university for female education, to be located at such places as may be deemed by the legislature most for the public good; and the legislature shall proceed to locate and fix the sites of said branches, at the same time, and by the same manner of election, that the site of the principal university is to be located; and said branches shall each be governed by twelve directors, to be elected annually by the board of trustees; and the government thereof shall in all respects be according to the by-laws of the university, framed and ordained for that purpose: *Provided*, That not more than one hundred thousand dollars shall be appropriated by said trustees, for the purpose of erecting buildings for said branches.

Ib. Sec. 18.
Appropriation for buildings.
Certain sum to be invested in U. S. stock, as a sinking fund.

§ 38. A sum not exceeding fifty thousand dollars in the discretion of the trustees, of the moneys which may be received from the first payments of the lands sold, is hereby appropriated and set apart, for the erection of the necessary buildings of the said university; and the interest arising from the last payments, to be made upon the sales of the lands as hereinbefore provided to be sold, shall be set apart and vested, as the same may be received, in the stock of the United States, and applied exclusively to sinking the amount of money hereby appropriated to the erection of the buildings as aforesaid, until the amount so invested shall be equal to the sum which may be so expended, after which the same shall be considered as capital stock, and shall never thereafter be diminished.

Ib. Sec. 19.
Further investments in U. S. stock.
100,000 dollars may be invested in bank or state stock.

§ 39. The residue of the sum, after deducting the sum which may be expended in the erection of the buildings as aforesaid, which may be received from the payments on the sales of the lands, shall be invested by the trustees without delay, as the same shall be, in such stocks of the United States, as the trustees may think most profitable: *Provided*, That a sum not exceeding one hundred thousand dollars, may, in the discretion of the board, be invested in a State Bank, if one shall be established, or in stock of the state, should such be created, and the sum so invested shall be considered capital stock, and shall never be diminished.

Ib. Sec. 20. Sum appropriated for payment of current expenses. Trustees to report state of funds to general assembly.

§ 40. The interest to be paid by the purchasers of the lands, or the lessees as aforesaid, or which shall be received from the stock which shall be purchased, as herein before directed, or so much thereof as may be necessary, shall be appropriated by the trustees, to discharge the current expenses of the university, and the trustees shall report to the general assembly once in each year, the state of the funds committed to their charge, with such recommendations, with regard to the improvement thereof, as to them shall seem advisable.

Ib. Sec. 21. Money to be paid over to the treasurer. Trustees authorized to sue for and collect all sums due. Proviso.

§ 41. It shall be the duty of the treasurer and comptroller of public accounts, to deliver over to the treasurer of the board of trustees,[1] on his application, all sums of money and notes, and bonds which may be in possession of either of them, and which they have received from the rent of lands hereby vested in the trustees, or which they may hereafter receive, and the treasurer of the trustees shall give his receipt for the same; and the moneys so received shall be subject to the order of the trustees; and the trustees are hereby authorized to sue for and collect all sums which are now due, or which may hereafter become due from the notes or bonds which shall be so received by the treasurer of the said trustees, to be by them appropriated to the use of the university: *Provided*, That any moneys that are now in the hands of the treasurer or comptroller of public accounts, belonging to the State University, shall be subject to the call of the trustees, until the treasurer of the board of trustees shall be duly authorized to receive said moneys.

Ib. Sec. 22. Trustees may sue occupants without lease.

§ 42. The trustees shall also have the power to sue for and collect all sums of money which are now due, or which may hereafter become due from such persons as have occupied or hereafter shall occupy any of the lands hereby vested in said trustees, without a lease from said trustees.

Dec. 26, 1822. *Sec.* 1. Compensation of trustees.

§ 43. The trustees of the state university are hereby allowed the sum of three dollars each, for each day they may be engaged in their duties as trustees aforesaid; also the sum of three dollars for every twenty-five miles travelling to and from the place of their meeting.

Ib. Sec. 2. Paid out of university funds. Proviso.

§ 44. Said allowances shall be paid out of the university funds: *Provided*, That trustees who are members of the legislature, shall not receive any pay for their services as trustees, whilst they are in attendance as members of the legislature.

1828—(14) *Sec.* 1. Trustees' term of office. Temporary appointments.

§ 45. The office of the present trustees of the university of the state of Alabama, shall expire from and after the passage of this resolution; and the trustees to be elected at the present session of the legislature, shall continue in office for the term of three years; and all trustees thereafter to be elected shall continue in office for the like period: and all appointments to fill vacancies shall expire at the time of the next periodical election for trustees.

1823—(37) *Sec.* 2. State treasurer to receive and keep university funds.

§ 46. It shall be the duty of the treasurer of this state, to receive and safely keep, all moneys that may be paid over to him by order of the board of trustees, subject to their order; *Provided*, That the bond now required of the treasurer of this state for the faithful discharge of the duties of his office, shall be given in the penalty of one hundred thousand dollars, which shall operate as security for the safe keeping, as well of any funds belonging to the university of this state, that may be at any time deposited in the treasury of this state, as of moneys paid into or deposited in the said treasury on other accounts: *Provided also*, That the board of trustees be requested to inform the general assembly during the next session, of the amount of money paid over to the treasurer, the time when so paid over, and how long it remained in his care—so as to enable them to allow such additional compensation to said treasurer as they may deem just and proper.

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[1] The 9th section of the act of 1821, empowering the trustees to appoint a treasurer, was repealed Dec. 31, 1823.

§ 47. In all suits or actions brought by or against the trustees of the university of Alabama, in any court of law or equity in this state, it shall not be necessary for their attorney or counsellor to produce the seal of the said trustees of the university of Alabama, or a power of attorney under the seal of the said corporation, to authorize them to appear and prosecute any suit or action in behalf of said trustees; and the courts of law and equity aforesaid, shall, in all cases, recognize their attorney or counsellor in the same manner as in suits between individuals.

1827—(5) *Sec.* 1. Attorney of trustees to be accredited without their corporate seal, or a power of attorney.

§ 48. The president of the board of trustees of the university, is hereby required to vest in the stock of the state, upon the same terms as the stock has heretofore been invested, what money is now in the treasury, arising from rents, interest, and sale of university lands.

1827—(22) *Sec.* 1. Investment of funds in state stock.

§ 49. The president of the board of trustees of the university, is hereby required to vest in the stock of the state upon the same terms as the stock has heretofore been vested, the amount of capital belonging to the university, which is now in the treasury, or which may be received during the present year.

1828—(43) *Sec.* 1. Further investment of funds.

§ 50. The funds arising by the sale of the lands granted by the United States, for the support of a seminary of learning in this state, which have heretofore been vested as capital stock in the Bank of the State of Alabama, shall form a part of the capital of said bank, and the certificates of state stock issued by the governor, and the president and directors of said bank, to the trustees of the university of Alabama, for the moneys thus vested, shall be obligatory on the state in the same manner as though they had been issued by authority of law; and all moneys hereafter recovered as aforesaid, with the exception of the interest which may accrue and be collected on outstanding bonds, where the land has been sold on a credit, shall in like manner be vested as capital in said bank, and the faith and credit of the state are hereby pledged, for the safety of the funds thus vested and provided to be invested, in the same manner as is provided in the first section of an act entitled an act to establish the Bank of the State of Albama, approved December the twentieth, eighteen hundred and twenty three.[1]

1833—(41) *Sec.* 1. University funds converted into state bank stock.

Money arising from sales of land, except interest, to become bank stock. Faith of the state pledged for safety of said funds.

§ 51. The investments hereafter made of the funds of the university in state stock and the investments made by this act, shall, when taken together, never exceed three hundred thousand dollars.

Ib. Sec. 2. Proviso.

UNIVERSITY LANDS.

§ 1. The governor is hereby authorized to appoint three commissioners in each county, within which any portion of the two townships of land granted by congress for a seminary of learning may have been or shall be reserved, whose duty it shall be to let or lease the same; which leasing may be done either publicly or privately, as the said commissioners may deem most advantageous to the state; *Provided*,

1819—(16) *Sec.* 10. Governor to appoint three commissioners to lease university lands.

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[1] See the first act under the title "Bank of the State of Alabama."

That said lands be first offered for public leasing, in convenient tracts, until the first day of January, eighteen hundred and twenty-one.

Ib. Sec. 11. Bonds of lessee payable to governor for use, &c.

§ 2. All bonds and notes given for any such lease, shall be made payable to the governor for the use of this state, and may in his name be sued and recovered; and all sums of money arising from such leases, shall be set apart, for the purposes of the seminary of learning aforesaid.

1821—(14) *Sec.* 1. Persons cultivating university lands without contract, liable to pay minimum price per acre. Commissioners to return list of persons and lands. Comptroller to collect.

§ 3. In all cases where any of the lands granted to this state by act of congress for the purpose of a seminary of learning, may be cultivated by any person, who may not have rented the same, either at public auction or by private contract, of the commissioners appointed to rent the same, he, she, or they shall be bound, and are hereby made liable to pay the minimum price per acre as fixed by law, for every acre so cultivated; and the commissioners appointed to rent the same respectively, are hereby required to transmit to the comptroller of public accounts, a list of the names of the person or persons who may cultivate any of the lands aforesaid, describing the same by range, township, section, &c., together with the number of acres so cultivated by each person, who is hereby authorized to collect the same, in the same manner as is prescribed by law for the collection of money due the state.

1824—(33) *Sec.* 1. Penalty for injuring timber on university lands. Trespassers allowed to give bond for damages assessed. Proceedings on forfeiture of bond. Justice to pay over money.

§ 4. If any person or persons shall unlawfully enter upon, and cut down, carry away or destroy any tree or trees, on any of the lands vested by law in the trustees of the university of the state of Alabama, every such person or persons, being lawfully convicted thereof, before a justice of the peace, shall forfeit and pay to the said trustees, the sum of ten dollars for every tree so cut down, carried away, or destroyed; and moreover, shall be committed to the jail of the county, in which such offence has been committed, there to remain until he or they shall pay the fine and costs assessed against him or them; unless such person or persons so convicted, shall execute to the said justice a bond with good security, payable to the trustees for the amount assessed as aforesaid, within fourteen days thereafter, which bond shall have the effect of a judgment; and should the same not be punctually paid, it shall be the duty of such justice to issue an execution thereon against such obligor or obligors and their securities, or their executors or administrators jointly; and all money received by such justice, in pursuance of the provisions of this act, shall be paid over by said justice, or his successors in office, as the case may be, to the trustees of the University of Alabama.

Ib. Sec. 2. Penalty for trespassing, and destroying or removing improvements.

§ 5. If any person or persons shall unlawfully enter upon, and destroy, or remove, any improvements situate on the lands vested as aforesaid in the trustees of the University of Alabama, or unlawfully enter upon and commit any trespass, or trespasses, not provided for by the first section of this act, such person or persons so unlawfully entering upon, and destroying or removing such improvement, or committing such trespass or trespasses, shall be proceeded against and punished in the manner as described by the fifth section of an act passed the eighteenth day of December, eighteen hundred and twenty, entitled "An Act to establish a State University."[1]

Ib. Sec. 3. Trustees may appoint persons to prevent trespasses.

§ 6. The trustees aforesaid shall have power to appoint such number of persons as they may deem expedient, residing near the said lands, for the purpose of protecting the same from trespasses, and to make them a reasonable compensation.

Note.—Many other provisions relating to the university lands, will be found interspersed under the preceding title.

[1] See first act under the title "University,"—§ 5.

USURY.

§ 1. No person or persons shall, upon any contract whatsoever, take directly or indirectly, for the loan of any money, wares, merchandise, bonds, notes of hand, or other commodities whatsoever, above the value of eight dollars for the forbearance of one hundred dollars, for one year, and after that rate for a greater or less sum, or for a longer or shorter time; and all bonds, contracts, covenants, conveyances, or assurances, hereafter to be made, for payment or delivery of any money, goods, wares, or merchandise, so to be lent, on which a higher rate of interest is received or taken than is hereby allowed, shall be utterly void and of no effect.

1819—(15)
Eight per cent. lawful interest.
Contracts for more, void.

§ 2. Every person who, upon any contract, shall take, accept, or receive, by way or means of any corrupt bargain, loan, exchange, or shift of any money, goods, wares, merchandise, commodities, or bonds or notes, or other thing whatsoever, above the rate of eight dollars for the forbearance or giving day of payment of one hundred dollars for one year, and so after that rate for a greater or less sum, or for a longer or shorter time, and so after that rate or proportion for goods, wares, merchandise, commodities, bonds, or notes, when such shall be lent, contracted, or agreed for, taken, accepted, or received, shall forfeit and lose for every such offence, the whole value or amount, together with all interest thereon; one half of which forfeiture shall be paid into the public treasury, for the use of the state, and the other half to him or them that will inform and sue for the same, to be recovered with costs by action of debt, in any court of record in this state: *Provided*, That if the borrower should be the informer as aforesaid, the whole amount thus recovered, shall be paid into the treasury, for the use of the state: *Provided also*, That every such action of debt as aforesaid, shall be commenced and sued in the lender's lifetime, or within three years after the commission of the offence, or in one year after the time of payment of any money, goods, wares, or merchandise, contracted to be paid, on any usurious agreement or contract.

Penalty for taking more than 8 per cent. interest.
How recovered and appropriated.
Proviso, where borrower is informer.
Limitation of action for the penalty.

§ 3. It shall be the duty of the judges of the circuit courts, to charge the grand jury of the respective counties within their circuits, to present every person who may violate the provisions of this act, that may come within their knowledge; and on every such presentment it shall be the duty of the solicitor for the state, to have issue joined or made up on such presentment, and prosecute the same under the rules and regulations prescribed for the prosecution of *qui tam* actions, and upon conviction, the whole amount thus ascertained to have been lent or taken contrary to the provisions of this act, shall be paid into the treasury for the use of the state.

Judges to charge grand juries to present offenders.
Prosecution, how conducted.

§ 4. When any note or notes, bond or bonds, shall be upon, or on account of any usurious contract, the same shall be void and of no effect, and the obligor or obligors for ever exonerated from the payment of the same; and the obligor or obligors shall be deemed by this act competent witnesses to prove the usurious consideration of any such bond or bonds, note or notes: *Provided*, That this act shall not be so construed as to prohibit the sale of any bond or bonds which may have been fairly and *bona fide* given, and not given for the purpose of evading the provisions of this act.

Usurious bonds, &c., void.
Obligor competent witness.
Bonds given bona fide may be sold.

§ 5. When any suit or action may be brought, in any court of record in this state, touching or concerning any usurious bond, specialty, promise, or agreement, the borrower or party to such usurious bond, specialty, contract, promise, or agreement, from whom such higher

Borrower may be a witness.

rate of interest is or shall be taken, shall be a good and sufficient witness to give evidence of such offence;[a] *Provided*, That if any person against whom such evidence is offered to be given, will deny upon oath, to be administered in open court, the truth of what such witness offers to swear against him, then such evidence shall not be admitted; and if any witness or party shall forswear himself in any such matter, and be thereof lawfully convicted, he or she shall suffer all the pains and penalties by law inflicted on persons convicted of wilful and corrupt perjury.

[a] *See* § 7 & 8.

Evidence not to be received if denied on oath.

Perjury under this act.

Persons convicted under this act, disqualified from being bank directors.

§ 6. Any person or persons who shall be lawfully convicted of violating this act, shall be for ever disqualified from being a director of any bank or banks in this state; and any person or persons, who may be director or directors of any bank or banks within this state, who may be convicted as aforesaid, shall forfeit his or their seat or seats as director or directors; and any person or persons who may be elected or chosen a director or directors of any bank or banks within this state, before entering upon the duties of his office, shall take the following oath, to wit: "I, ——— ———, do solemnly swear, (or affirm,) that I have not either directly or indirectly violated the act, entitled 'An Act regulating the rate of interest,' nor will I be guilty of violating said act, either directly or indirectly, while I continue in the office of director: So help me God."

Bank directors to take oath against usury.

1833—(16) *Sec.* 1. Usury, how to be established after the death of obligee.

§ 7. It shall not be lawful for the obligor or obligors, maker or makers of any bond or note, on which suit may hereafter be brought, to establish the fact of usury by his, her, or their own oath, where the obligee or payee of such bond or note, has departed this life; but in such cases, shall be required to establish his, her, or their plea of usury, by other testimony.

Ib. Sec. 2. Representatives of deceased persons allowed to plead usury on oath.

§ 8. Where the borrower or borrowers of any sum of money, or other thing alleged to be on usurious consideration, shall have departed this life before the trial of any suit in which the plea of usury may be filed, it shall be lawful for the legal representative or representatives of such borrower or borrowers, to have the benefit of the fourth section of an act entitled "An act to regulate the rate of interest," passed December 17, 1819,[b] by making affidavit, that he, she, or they believe the contract sued on to be usurious: *Provided*, That this section shall have no force or effect where the lender shall have departed this life: *And provided further*, That if any person against whom such evidence is offered to be given, will deny upon oath, to be administered in open court, the truth of what such witness offers to swear against him, then such evidence shall not be admitted; and if any witness or party shall forswear himself, in any such matter, and be thereof lawfully convicted, he, she, or they shall suffer all the pains and penalties, by law inflicted on persons convicted of wilful and corrupt perjury.

[b] *The preceding act.*

Proviso.

False swearing.

VAGRANTS.

1801—(1) Preamble.

Whereas, it becomes necessary to suppress all wandering, disorderly, and idle persons:

Vagrants, how to be dealt with.

§ 1. *Be it therefore enacted, &c.*, That every person, whether male or female, who has no apparent means of subsistence, shall apply himself to some honest calling for his support; and if any person shall neglect so to do, or shall be found sauntering about, and endeavoring to maintain himself by gambling, or other undue means, it shall be lawful for any justice of the peace of the county wherein such person may be found, on due proof made, to issue his warrant for such offending person, and cause him to be brought before such justice, who is hereby empowered, on conviction, to demand security for his good behavior, and in case of refusal or neglect, to commit him to the jail of the county for any term not exceeding ten days, at the expiration of which time he shall be set at liberty, if nothing criminal appears against him; the said offender paying all charges arising from such imprisonment. And if such person shall be guilty of the like offence after the space of twenty days, he or she so offending shall be deemed a vagrant, and be subject to one month's imprisonment, with all costs accruing thereon: which if he or she neglect or refuse to pay, he or she may be continued in prison until the next county court, which may proceed to try the offender, and if found guilty by the verdict of a jury of good and lawful men, the said court may proceed to hire the offender for any term not exceeding six months, to make satisfaction for all costs: but if such person so offending be of noted ill fame, so that he or she cannot be hired for the costs, nor give sufficient security for the same, and his or her good behavior, in that case, it shall be lawful for the court, to cause the offender to receive not exceeding thirty-nine lashes on his or her bare back; after which he or she shall be set at liberty, and the costs thereon accruing shall become a county charge; which punishment may be inflicted as often as the prisoner may be guilty, allowing twenty days between the punishment and the offence.

Penalty for harboring idle persons, of suspicious character.

§ 2. It shall not be lawful for any housekeeper within this territory, to harbor or entertain any idle person of a suspicious character knowingly, for any longer time than twenty-four hours, under the penalty of ten dollars for every such offence, to be recovered by warrant before any justice of the peace of the county where the offence shall be committed.

Fines, how appropriated.

§ 3. All fines inflicted by this act shall be paid, the one half to the informer, and the other half to the use of the county.

VICE AND IMMORALITY.

1803—(6)

No work or diversion allowed on Sunday.

§ 1. No worldly business or employment, ordinary or servile work, (works of necessity or charity excepted,) nor shooting, sporting, hunting, gaming, racing, fiddling, or other music for the sake of merriment, nor any kind of playing, sports, pastimes, or diversions, shall be done, performed or practised, by any person or persons within this territory, on the Christian Sabbath, or first day of the week, commonly called Sunday; and every person, being of the age of fourteen years or upwards, offending in the premises, shall for every such offence, forfeit and pay the sum of two dollars; and no merchant, or shopkeeper, or other person shall keep open store, or dispose of any wares, or merchandise, goods or chattels, on the first day of the week commonly called Sunday, or sell or barter the same, upon pain of forfeiting the sum of twenty dollars, for every such offence; and if any person offending in any of the premises aforesaid, shall be thereof convicted before any justice of the peace, for the county wherein the offence shall have been committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, then the said justice before whom such conviction shall be had, shall direct and send his warrant under his hand and seal, to some constable of the county where the offence shall have been committed, commanding him to levy the said forfeitures and

Merchants and others forbidden to sell on Sunday.

Proceedings against offenders.

penalties by distress and sale of goods and chattels of such offender; and in case no such distress can be had, then every such offender shall, by a warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time not exceeding four hours.

No wagoner, &c., to ply on Sunday.

§ 2. No wagoner, carter, drayman, drover, butcher, or any of his slaves or servants, shall ply or travel with his wagon, carts, or drays, or shall load or unload any goods, wares, merchandise, or produce, or drive cattle, sheep, or swine, in any part of this territory, on the first day of the week called Sunday, under the penalty of five dollars, to be levied, recovered, and applied, in manner and form as is directed by this act.

Process not to be served on Sunday, except in criminal cases, or for breach of the peace.

§ 3. No person or persons, upon the first day of the week called Sunday, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree, (except in criminal cases or for a breach of the peace,) but the service of every such writ, process, order, warrant, judgment, or decree, shall be void to all intents and purposes whatsoever: and the person or persons so serving or executing the same, shall be liable to the suit of the party aggrieved, and to answer damages to him for the doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree: *Provided*, That if information shall be made by the oaths of two reputable persons to any justice of the peace, or magistrate of any corporate town, that they have good reason to believe that any person liable to have any such process, warrant, order, judgment, or decree, served upon him, intends to withdraw himself and escape from this territory, under cover and protection of the said first day of the week commonly called Sunday, it shall be lawful for any officer duly authorized, (being furnished with a certificate of such information, upon oath as aforesaid, under the hand of the justice of the peace, or magistrate as aforesaid,) to serve or execute such process, warrant, order, judgment, or decree, on the first day of the week, which shall be as valid and effectually done, to all legal intents and purposes, as if the same had been done on any other day of the week.

Service may be legalized, party making oath, &c.

Persons profanely swearing, or cursing, to be fined fifty cents.

§ 4. If any person shall profanely swear or curse in the hearing of any justice, or shall be convicted of profanely cursing or swearing, by the oath of one or more witnesses, or confession of the party before any justice, every such offender shall forfeit and pay for every such offence, the sum of fifty cents.

Fine for drunkenness.

§ 5. Every person convicted of drunkenness, by view of any justice, confession of the party, or oath of one or more witness or witnesses, shall for every such offence forfeit and pay one dollar.

All plays, shows, &c., forbidden on Sunday,

§ 6. If any person or persons whatsoever, shall show forth, exhibit, act, represent, or perform, or cause to be shown forth, acted, represented, or performed, any interludes, farces, or plays of any kind, or any games, tricks, juggling, slight of hand, or feats of dexterity and agility of body, or any bear-bating, or bull-bating, or any such like show, or exhibitions whatsoever, on the first day of the week, every person so offending, and thereof convicted before any justice of the peace, of the county where the offence shall have been committed, shall for every such offence, forfeit and pay the sum of fifteen dollars.

under a penalty of fifteen dollars.

Penalty for disturbing public worship.

§ 7. If any person or persons whatsoever, shall wilfully and of purpose, disquiet, interrupt, or disturb any assembly of people met for religious worship, either by making a noise, or by rude or indecent behavior, or profane discourse, whether within the place of worship, or out of it so near the same as to disturb the order and solemnity of the meeting; then every person so offending, and being thereof convicted, before any justice of the peace of the said county, shall for every such offence, forfeit and pay the sum of five dollars.[1]

Mode of recovering certain fines under this act.

§ 8. In case any person who shall be convicted of any of the offences mentioned in the fourth, fifth, sixth, and seventh sections of this act, shall not immediately pay the sums so forfeited, with the charges of such conviction, then the said justice before whom such conviction shall be had, shall direct and send his warrant under his hand and seal to some constable of the county, where the offence shall have been committed, commanding him to levy the said forfeitures or penalties, together with the charges, by distress and sale of the goods and chattels of such offender; and in case no such distress can be had, then every such offender shall, by warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time, not exceeding four hours.

Proceedings against offenders.

§ 9. Every justice of the peace shall, immediately on information given upon oath or affirmation of any person whatsoever, cause the offender or offenders against this act to appear before him, and upon such information being proved as aforesaid, shall convict such offender and offenders in such a manner as in and by this act is prescribed.

Justice to receive fines, and pay over.

§ 10. It shall be the duty of the justices before whom such conviction shall be had, to receive all such forfeitures and fines, as may become due by virtue of this act, and pay one half to the informer, and the other half to the treasurer of the county wherein the offence was committed, for the use of the poor thereof.

Justices to enforce this act.

§ 11. All justices of the peace for the county wherein any such offence shall be committed, are required to put this act into execution, against any person or persons within their respective jurisdictions.

Limitation of prosecutions.

§ 12. No person shall be prosecuted for any offence against this act, unless the same be proved or prosecuted within ten days after the commission of such offence.

WATER-COURSES.

Act of congress—*March* 2, 1819. *Sec.* 6. All navigable streams public highways.

§ 1. All navigable waters within the said state (*of Alabama*) shall for ever remain public highways, free to the citizens of said state, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state.

1808—(2) *Sec.* 3. County courts may contract for the opening of navigable streams.

§ 2. The county courts of the respective counties in this territory, are authorized, whenever in their opinion it may be deemed necessary and proper, to open any navigable stream in the said county, to contract with one or more persons for opening the same, by giving at least forty days' notice at the court-house of said county, previous to making such contract, which shall in every case be let to the lowest bidder for the same.

Ib. Sec. 4. Contractors to enter into bond.

§ 3. It shall be the duty of said county courts, to take bond and security of the person or persons with whom they may contract for opening any navigable stream, as contemplated by the preceding section, and upon the fulfilment and execution of the said contract, they are hereby authorized to draw on the treasury, in favor of the person or persons with whom they have contracted as aforesaid, for any sum not exceeding one tenth part of the revenue of said county.

1810—(2) *Sec.* 1. County courts to have the same juris-

§ 4. The clearing and opening of all streams, which have been declared by law to be navigable, or which may by any county court diction of navigable streams, as of public roads.

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[1] See "Religion,"—§ 8.

within this territory be declared navigable, shall be placed under the control of the county court of the county through which the same may pass; and the said county courts are hereby vested with power, at their discretion, to appoint overseers to clear out the same, and apportion the hands to work thereon, in the same manner, and under the same regulations in every respect, that overseers and hands appointed to work on public roads are placed by law.

1814—(9) *Sec.* 1. Obstruction of navigable waters prohibited. Fine for obstructing.

§ 5. It shall not be lawful for any master of a vessel, or other person, to obstruct, or cause to be obstructed, any of the channels or passes, in any of the navigable bays, rivers, or creeks, in this territory, by throwing, or putting, or causing to be thrown or put, any ballast, tree, or other impediments, into the said channels or passes, or in any other manner whatever to obstruct the free navigation thereof; and the person or persons so offending, shall be fined in a sum not less than fifty dollars, nor more than two hundred, to be assessed by a jury.

Ib. Sec. 2. Justices to apprehend and bind over offenders. Grand juries to take cognizance.

§ 6. It shall be the duty of any justice of the peace, upon his own knowledge, or upon proper information, to issue his warrant to apprehend any person so offending, and upon his appearance, to bind him in a sufficient recognizance to appear at the next superior court to be holden for the county in which the offence may have been committed, to answer an indictment to be preferred against him. It shall moreover be the duty of the grand jury to take notice of offences arising under this act.

1819—(3) *Sec.* 1. Water-courses reported navigable by U. S. surveyor.

§ 7. All water-courses reported to be navigable, or which may hereafter be reported to be navigable, by the surveyor of the United States, employed in surveying lands in this state, shall be and remain free and open.

Ib. Sec. 2. Duty of those erecting fish-dams.

§ 8. If any person or persons shall erect any fish-dam on any such water-courses, he or they shall open in the deepest channel of said water-courses, where any such dam may be erected, one third of said water-course, including the main channel thereof.

Ib. Sec. 3. Penalty for not complying with the foregoing section.

§ 9. In case any person shall fail to comply with the provisions of the second section of this act, he shall forfeit and pay for every such offence, the sum of twenty dollars, to be recovered before any justice of the peace; one half thereof to the use of the person who will sue for the same, the other half to the county where such offence shall be committed.

Ib. Sec. 4. Making hedges, or felling trees in navigable streams, &c. Penalty.

§ 10. If any person shall make any hedges, or cut, or cause to be cut, any tree or trees to fall in said navigable water-courses, he shall forfeit and pay for every such offence, the sum of ten dollars for every day such hedge or tree shall so remain in said water-course, recoverable before any justice of the peace; one half thereof to the use of the person who will sue for the same, and the other half to the use of the county where such offence shall be committed.

1820—(15) *Sec.* 1. Streams not diverted from another's land.

§ 11. It shall not be lawful for any person, under any pretence whatever, to obstruct or divert any stream of water from its natural channel, which would otherwise flow through the land of any other person.

Ib. Sec. 2. Offenders liable to action.

§ 12. If any person shall violate the provisions of this act, he shall be liable to the action of the party aggrieved thereby.

1820—(22) *Sec.* 1. Counties to have jurisdiction of water-courses on their margins.

§ 13. The jurisdiction over all rivers not included in the bounds of any county in this state, is hereby given to the county or counties whose jurisdiction now extends to the margin thereof. And it shall be lawful for the proper officer to execute any process to him directed, on the body or property of the defendant therein named, as well on said river, as in other parts of such county or counties. All process thus executed, shall be as valid as if executed in the body of the county.

WEIGHERS—PUBLIC.

[[1] WHEREAS, difficulties and disputes frequently arise between the seller and the purchaser of cotton and other articles of merchandise, with regard to the weight, and for remedy thereof:

1822—(33) Preamble.

§ 1. *Be it enacted, &c.* That the judge of the county court for the county of Mobile is hereby authorized to appoint one or more suitable persons, not exceeding two, who shall be known as public weighers for the city aforesaid. And the person appointed a public weigher, as aforesaid, before he enters upon the duties of his office, shall be required to give bond with good and sufficient security to the judge of the county court aforesaid, in the sum of one thousand dollars, for the faithful performance of the duties enjoined on him by this act; and shall also take and subscribe an oath, that he will without favor, partiality, or affection, discharge the duties of his office.

Judge of court to appoint public weighers for city of Mobile.

Weighers to give bond, and take oath.

§ 2. The judge of the county court aforesaid, shall have power and authority to make such rules and orders for the government and compensation of said public weigher, as to him may seem meet, and the same to revoke, alter and amend from time to time, as he may deem proper; and whenever the said public weigher may be called upon by any person or persons to weigh cotton, or any other article that may, upon examination thereof, prove to be partially wet or damaged, the said public weigher shall have full power and authority to decide and determine the loss of weight such cotton or other article has sustained in consequence of being weighed in a wet or partially damaged state; and the said public weigher shall make such allowance in the actual weight for such wet or damage as may to him appear equitable and just, between the vendor and the purchaser, or the parties interested therein; and the returns of cotton or any other article made by the public weigher as aforesaid, after having been weighed at the scales of some public weigher, shall be binding upon all parties interested therein, so far as regards the weight: *Provided however*, That any person or persons whatsoever, shall at all times have the right to weigh his or their own cotton, or any other article, at their own scales.]

Judge may fix weigher's compensation.

Weigher may make allowance for articles wet or damaged.

Weigher's return binding.

Proviso.

§ 3. On charges preferred by any person or persons feeling themselves aggrieved by the neglect of the said public weigher, and on affidavit being made in support of the same, it shall be the duty of the judge aforesaid to summon the said public weigher to appear before him at such times as he may appoint; giving at least two days' notice, and furnishing at the same time a copy of the charges as preferred, to enable him to appear with his proof; and if on a fair investigation of the charges, from the testimony adduced, the said public weigher shall have been found guilty of any wilful neglect of the duties of his office, it is hereby made the imperative duty of the judge aforesaid, to dismiss him from office, and appoint another suitable person to fill the vacancy: *Provided always*, That the cost of said investigation shall be paid by the party in default: *And provided also*, That all

Persons aggrieved, may complain to judge, who shall arraign and try the weigher.

Costs.

Witnesses' pay.

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[1] The first two sections of this act were repealed in January, 1833, and the appointment of public weighers for Mobile, given to the mayor and aldermen of the city. See hereafter, 1833—(24). But the express references to them in a subsequent part of this title, rendered their insertion indispensable.

Persons injured may put the weigher's bond in suit.

witnesses shall be entitled to the same pay, and the costs shall be collected, as in other cases: *Provided also,* That it may be lawful for any person or persons who may be injured by the conduct of the public weigher, to put in suit the bond aforesaid, in any court having jurisdiction thereof; and judgment shall be rendered for the penalty of said bond, to be discharged by payment of the amount of damages found actually to be sustained, together with costs of suit: *Provided,* That nothing in this act contained, shall be intended to force persons to have their cotton and other produce weighed by the aforesaid weigher, or have damages thereon assessed, unless they shall think proper so to do.

Dec. 24, 1824. *Sec.* 2. Taking more than allowed, to be dismissed from office.

§ 4. In case any public weigher appointed for the city of Mobile, shall take or exact a greater sum than shall be allowed by the judge of the county court of Mobile county, by the provisions of this act, it is hereby made the imperative duty of said judge, on due proof, to dismiss him from office, and appoint another suitable person to fill his vacancy.

Jan. 12, 1827. *Sec.* 1. Not to take unlawful fees.

§ 5. No public weigher in the city of Mobile shall charge or take, directly or indirectly, higher fees than heretofore allowed by law, for weighing any bale of cotton, or other article.

Ib. Sec. 2. Offenders, liable to forfeiture of thirty dolls. How recovered and applied.

§ 6. If the public weigher or weighers in the city of Mobile shall take or receive any other or higher fees than those now fixed by law, for weighing the articles therein specified, in the acts fixing their compensation, he or they shall shall forfeit and pay the sum of thirty dollars for each offence, to be recovered in the name of the person or persons, or of the firm or firms of merchants aggrieved, before any justice of the peace having cognizance thereof, and one half of the sum so recovered shall be paid to the person aggrieved, and the other half to the county treasurer of said county, for the use and benefit of the county of Mobile.

1833—(24) *Sec.* 1. Weighers at Mobile, former mode of appointment abolished.

§ 7. The first and second sections of an act approved December 31, 1822, entitled, "An Act authorizing the judge of the county court of Mobile county to appoint public weighers in the city of Mobile," are hereby repealed.

Ib. Sec. 2. Five to be elected, how. Their duties.

§ 8. Five public weighers shall be elected by the mayor and aldermen of the city of Mobile, whose duty it shall be to weigh all cotton or other articles, when applied to for that purpose, with scales or balances that have been compared with the standard, and certified therewith.

Ib. Sec. 3. Oath to be taken by them.

§ 9. The public weighers so elected, shall, before they enter on the discharge of their duties, take an oath before some person, authorized to administer the same, that they will weigh all dry cotton correctly, with weights corresponding with the standards, and that they will return the true weight without any deduction, and that they are not, nor will not, either directly or indirectly, be interested in the sale or purchase of cotton weighed by them.

Ib. Sec. 4. Their duty and compensation, in certain cases.

§ 10. When any dispute shall arise in relation to deductions on wet or damaged cotton, such deductions shall be made by any two or more of such public weighers; such additional weighers shall be entitled to the same compensation for their services as is allowed to other weighers by this act, to be paid by the party in the wrong.

Ib. Sec. 5. Fee for weighing.

§ 11. The public weighers shall receive as full compensation for weighing and marking cotton, six and one fourth cents per bale, and no more.

Jan. 10, 1826. *Sec.* 1. Weigher for the town of Blakely.

§ 12. The judge of the county court of Baldwin county, is hereby authorized to appoint one or more suitable persons, not exceeding two, who shall be known as public weighers for the town of Blakely.

§ 13. The public weigher to be appointed by virtue of this act, shall be required to give bond to the same amount, payable to the judge of the county court of Baldwin county, for the faithful performance of the duties assigned him, and be subject to the same penalties and liabilities, under the direction of the judge of the county court aforesaid, as the public weighers of the city of Mobile are subjected to, by "An Act authorizing the judge of the county court of Mobile county to appoint a public weigher in the city of Mobile," passed December thirty-first, one thousand eight hundred and twenty-two; and by an act entitled "An Act to alter and amend an act authorizing the judge of the county court of Mobile county to appoint a public weigher in the city of Mobile," passed December twenty-fourth, one thousand eight hundred and twenty-four.[a]

Ib. Sec. 2. Bond. Under what regulations and responsibilities.

[a] *See* § 1, 2, 3, 4.

§ 14. It shall not be lawful for any public weigher in the city of Mobile or town of Blakeley, to charge for labor, marking, &c. but shall only be entitled to the sum of six and one fourth cents, for each bale so weighed by him.

Ib. Sec. 3. No charge allowed for marking bales, &c.

WEIGHTS AND MEASURES.

§ 1. THE treasurer of the territory is hereby authorized and required to procure, as soon as may be, at the public expense, one set of weights and measures, viz: one weight of fifty pounds, one of twenty-five, one of fourteen, two of six, two of four, two of two, and two of one pound, avoirdupois weight, according to the standard of the United States, if one be established, but if there be none such, according to the standard of London, with proper scales for weights, together with measures, one of the length of one foot, and one of one yard, cloth measure, and the measures of one half bushel, one peck, and one half peck, dry measure; also the measures of one gallon, one of half a gallon, one of one quart, one of one pint, one of half a pint, and one of one gill, wine measure, according to the above named standard; and the said weights, measures, and scales, shall be deposited with the said treasurer, to serve as a general standard for weights and measures within this territory, until otherwise directed by congress.

1807—(13) Treasurer to procure a general standard of weights and measures.

§ 2. When the aforesaid weights, measures, and scales, shall be provided as aforesaid, the treasurer shall cause to be made or procured for each county within this territory, at the public expense, one set of scales, weights and measures, and the last mentioned weights and measures shall be compared by the said treasurer, with the aforesaid general standard, and when found to agree therewith, shall be forthwith transmitted by him to the clerks of the several county courts in this territory.

Treasurer to distribute standards to the counties.

§ 3. The said weights, measures, and scales, shall be kept by such person in each county, as the county court shall direct, who shall take the following oath, viz: "I, A. B., do solemnly swear (or affirm, as the case may be,) that I will in all things act with justice and faithfulness in my appointment as keeper of the standard of weights and measures for the county of ———, according to law, to the best of my skill and judgment: So help me God." And immediately after such appointment, the clerks of the several county courts shall make known the same by advertisement, to be fixed at the door of the court-house, and also by inserting the same in one of the public gazettes of this territory. And all persons desirous of trying their weights and measures, may resort to the aforesaid county standard for that purpose, and if

County standards, how kept.

Private weights and measures

how tried by standard. they are found true, the persons appointed to keep the said standard, shall seal them with a seal, to be provided by the county court, at the expense of the county; and the persons appointed in the several counties, to keep the said county standard, shall be entitled to receive, for trying every steelyard and giving certificate therefor, and for trying any other weights and measures, and sealing the same, fifty cents each, to be paid by the person for whom such service is rendered or done.

Fees.

Penalty for selling by other than standard weights and measures.

§ 4. After the appointment of a person to keep the said county standard shall have been made as aforesaid, every person or persons who shall sell any commodity whatever, by weight or measure, that shall not correspond with the said county standard, or shall keep any such for the purpose of buying or selling with, shall, for every such offence, forfeit and pay the sum of ten dollars; recoverable before any justice of the peace, by any person who shall sue for the same, and applied to his own use.

1815—(10) *Sec.* 1. Treasurer to procure six sets.

§ 5. The treasurer of the territory, is hereby authorized and required, to procure, as soon as may be, at the public expense, six sets of weights and measures, as described in the act entitled "An Act establishing weights and measures in the Mississippi-Territory," passed February 4, 1807.[a]

a *The preceding act.*

Ib. Sec. 2. Places where to be sent and kept.

§ 6. When the sets of weights, measures, and scales shall have been procured by the treasurer, as authorized by this act, one set shall be conveyed at the public expense to Huntsville, in Madison county; one other set to some place on or near Pearl River; one other set to the town of St. Stephens; one other set to the town of Mobile; one other set to the town of Woodville; and the sixth set to the town of Port Gibson, and be placed in the hands of some person to be appointed by the governor; and the sets of weights and measures heretofore procured, shall be forthwith delivered to some person residing in the city of Natchez, to be appointed in the manner above described. And the keepers of weights and measures, hereby authorized to be appointed, shall, previously to entering upon the discharge of their duties, take the oath or affirmation prescribed in the third section of the act above recited, and the said keepers shall, immediately after their appointment, make known the same by advertisement, to be fixed at the door of the court-house of the counties in which they reside, and also by inserting the same in the nearest newspaper published in this territory. And immediately after the appointment of the said keepers, all persons residing in any part of this territory, and desirous to try their weights and measures, may resort to any of the aforesaid standards for that purpose; and if they are found true, the keeper of any of the said standards shall seal them with a seal, to be procured by the said treasurer at the expense of the territory; and the persons appointed keepers as aforesaid, shall be entitled to receive the fees prescribed by the third section of the act above recited, for the services therein specified.

Keepers to take oath.

Ib. Sec. 3. Standards to be adopted within three months after notice. Penalty.

§ 7. After public notice of the appointment of the keepers of weights and measures, hereby authorized to be made, every person residing in this territory, who shall sell any commodity whatever by weight or measure, that shall not correspond with the standard hereby established, shall, for every such offence, forfeit and pay the sum of fifty dollars, recoverable before any justice of the peace, to be paid to the county treasurer for county purposes.

1820—(12) *Sec.* 1. Clerks of county courts to procure standard measures.

§ 8. The clerks of the county courts of each county in this state, shall, immediately after the passage of this act, procure from Huntsville, St. Stephens, or Mobile, one set of measures, according to the standard of measures provided for in the Mississippi Territory, and the same shall be the lawful measures of the state of Alabama, that is to say: one half bushel, one peck, and one half peck, dry measure; to be made of good and durable wood: also one set of liquid measures, that is to say: one of a gallon, one of half a gallon, one quart, one pint, one half pint, and one gill, to be made of tin, pewter, or copper; which said measures shall be deposited in the clerk's office in each county, and kept by said clerks.

§ 9. After the above named measures are procured, the clerk of each county court as aforesaid, shall make known the same, by advertisement at the door of his court-house, or place of holding court: and all persons, who shall hereafter keep measures for the purpose of selling by said measures, shall present all such measures to the clerk, who shall examine the same, and on finding them to agree with the measures herein directed to be procured, shall stamp or brand the same with the initials A. S. And the said clerk may claim and receive twelve and a half cents for each measure so branded or stamped: *Provided*, nothing in this act shall be so construed as to operate on any measure or weight heretofore tried by said standard of weights and measures, and stamped under the laws of the Alabama Territory.

Ib. Sec. 2. Which shall be advertised.

Private measures to be compared with standards.

Proviso.

§ 10. If any person shall sell by any other measures than those pointed out by this act, he or she shall, for every such offence, pay the sum of ten dollars, to be recovered before any justice of the peace in the county where such offence may be committed; and the sum so recovered, shall be paid over to the person suing for the same.

Ib. Sec. 3. Penalty for selling by any other measures.

§ 11. The clerks of the several county courts are hereby made the keepers of the measures herein named; and before they or either of them enter on the duties of that office, they shall take and subscribe the following oath, to be administered by any justice of the peace of said county: "I ———, do solemly swear, that I will in all things act with justice and faithfulness in my appointment as keeper of the measures for said county, according to law, and to the best of my skill and judgment:—So help me God."

Ib. Sec. 4. Clerks to be keepers of measures.

Keeper's oath.

§ 12. All expenses that may be incurred in procuring said measures, for the several counties in this state, shall be paid by the treasurer of the county, to the clerk for procuring the same: and this act shall continue in force, until altered by the state, or until the United States shall pass a law fixing a standard for measures.

Ib. Sec. 5. Expenses of procuring measures to be paid by the county treasurer.

§ 13. The secretary of state is hereby authorized and required to procure as soon as may be, at the expense of the state, one set of weights and measures of best materials, for each county in this state, each set to consist of one weight of fifty pounds, one of twenty-five, one of fourteen, one of seven, two of four, two of two, and two of one pound, avoirdupois weight, according to the standard established by an act of the Mississippi territory, passed February fourth, eighteen hundred and seven,[a] with proper scales for weights, together with measures, one of the length of one foot, and one of one yard, cloth measure; and the measures of one half bushel, one peck, and one half peck, dry measure; also the measures of one gallon, one of half a gallon, one of one quart, one of one pint, one of half a pint, and one of one gill, wine measure, according to the above mentioned standard, which shall be the standards of weights and measures in this state, till otherwise provided by congress; and the said secretary of state shall cause one set of the said weights and measures to be distributed to each county in this state, and delivered to the clerks of the several county courts, as soon after procuring the same as it can be done with convenience.

1828—(13) *Sec.* 1. Secretary of state to procure a set of weights and measures for each county.

[a Above, 1807—(13).)

To be delivered to clerks of county courts.

Ib. Sec. 2. Clerks to give notice of the receipt of weights and measures, and to try weights, &c., presented to him.

§ 14. The clerks of the several county courts in this state shall give notice by advertisement, by posting up notices at the court-house door, and at five or more of the most public places in their respective counties, of the receipt of the said weights and measures provided for their respective counties, whenever the same shall be received; and it shall be the duty of the said clerks of the county courts to try all weights and measures presented to them, by the standard aforesaid, and if found to be true and to agree with said standard, the said clerks shall seal them with a seal to be provided by the county court of their respective counties at their expense, for that purpose; and the said clerks shall be entitled to the sum of twelve and a half cents for each seal applied by them to such weight or measure for their services, under this act, to be paid by the person having the same performed.

Fees for sealing.

Ib. Sec. 3. Penalty for selling by any other than standard weights and measures.

§ 15. Three months after the receipt by the county court clerks of said weights and measures, and after notice shall have been given as aforesaid, every person who shall sell any commodity whatever, by weight or measure, that shall not correspond with the said county standard, or shall keep any such for the purpose of buying or selling by, shall, for every such offence, forfeit and pay the sum of ten dollars, recoverable before any justice of the peace, by any person who may sue for the same, and which may be applied to his own use.

WILLS.

1806—(1) *Sec.* 2. Who are capable of devising real estate.

§ 1. Every person of the age of twenty-one years, of sound mind, lawfully seized of any lands, tenements, or hereditaments, within this territory, in his or her own right, in fee simple, or for the life or lives of any other person or persons, shall have power to give, devise, and dispose of the same, by last will and testament in writing: *Provided*, That such last will and testament be signed by the testator or testatrix, or by some person in his or her presence, and by his or her direction, and attested by three or more respectable witnesses, subscribing their names thereto, in the presence of such devisor; saving, however, to the widows of testators, their dower in lands, tenements, or hereditaments so devised.

Devise, how executed and attested.

Dower excepted.

Ib. Sec. 3. Nuncupative wills.

§ 2. No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his or her habitation, or where he or she had resided for the space of ten days or more, next preceding the time of making such will, except such person be taken sick from home, and die before his or her return to such habitation; nor when the value bequeathed exceeds one hundred dollars, unless it be proved that the testator called on the persons present at the time of making such will, or some of them, to take notice or bear testimony, that such was his or her will, or to that effect. (1)

Ib. Sec. 4. Probate, &c., of nuncupative wills, how regulated.

§ 3. No probate of any nuncupative will shall be taken, or letters testamentary granted thereon, till after the expiration of fourteen days from the time of the decease of the testator, nor till citation hath issued to call in the widow and other person or persons principally concerned, if resident in this territory, that they may appear and contest such will if they see cause.

Ib. Sec. 5. Nuncupative wills must be proved in six months, unless, &c.

§ 4. After the expiration of six months from the time of speaking any pretended testamentary words, no testimony shall be received to prove the same to be a nuncupative will, unless such words, or the substance thereof, were reduced to writing within six days after speaking the same.

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(1) To constitute a nuncupative will, the words spoken must have legal certainty, and be intended as a will:—and they must be spoken *in extremis*. Sykes et al. *v.* Sykes et al. 2 *Stewt. Rep.* 364.

Ib. Sec. 6
Written will not revoked by nuncupative will, except in case of soldiers, seamen, &c.

§ 5. No will in writing, or bequest therein of goods and chattels, shall be revoked by any subsequent will, codicil, or declaration, unless the same be in writing: *Provided always*, That any soldier in actual military service, or mariner or seaman being at sea, may dispose of and bequeath his goods and chattels, as he could have done before the passing of this act, anything herein contained to the contrary notwithstanding.

Ib. Sec. 7.
Posthumous children provided for.

§ 6. When any child shall be born after the death of the father, without having any provision made in his will, every such posthumous child shall have the same share of the estate of his or her father, that such child would have had, if the father had died intestate, and such share shall be assigned to him or her accordingly, to be taken in proportion from the legatees and devisees of such will.

Ib. Sec. 8.
Estate not bequeathed, how disposed of.

§ 7. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, shall be distributed in the same manner as the estate of an intestate, and the executor or executors shall administer the same accordingly.

Ib. Sec. 9.
Attesting legatees to forfeit their bequests in certain cases.

§ 8. If any person shall be a subscribing witness to a will, wherein any devise or bequest is made to such subscribing witness, and the will cannot be otherwise proved, the devise or bequest to such witness shall be void, and he or she compellable to appear and give testimony on the residue of the will, in like manner as if no such devise or bequest had been made. But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of such share shall be saved to such witness as shall not exceed the value of the said devise and bequest made to him or her in the said will.

Ib. Sec. 10.
Attesting creditor competent witness.

§ 9. If lands, tenements, or hereditaments shall be charged with any debt or debts by any will or codicil, and the creditor whose debt is so secured, shall attest the execution of such will or codicil, such creditor may notwithstanding be admitted as a witness of the execution thereof.

Ib. Sec. 12.
Wills, where to be proved.

§ 10. If any testator shall have a mansion-house, or known place of residence, his will shall be proved in the orphans' court of the county wherein such mansion-house or place of residence may be; but if he has no place of residence, and lands be devised in the will, it shall be proved in the county wherein the lands so devised are situate, or in one of them, where there shall be lands so devised in several counties; and if he has no such known place of residence, and there be no lands devised, then the will may be proved either in the orphans' court of the county where the testator shall die, or that wherein his estate, or the greater part thereof shall be.

Ib. Sec. 13.
Testimony of subscribing witnesses out of the territory.

§ 11. When the subscribing witnesses to any will shall reside out of this territory, the court to which the probate of the said will may appertain, is authorized to issue a *dedimus potestatem* to take the testimony of such witnesses in proof of said will, and receive the testimony so taken accordingly.

Ib. Sec. 14.
Foreign wills, how to be proved.

§ 12. Authenticated copies of wills, proved according to the laws of any of the United States, or of any country out of the limits of the United States, and touching or concerning estates within this territory, may be offered for and admitted to probate in the said courts; but such will shall be liable to be contested and controverted, in the same manner as the original might have been.

Ib. Sec. 15. Secreted wills to be produced. Wills, after probate, how preserved.

§ 13. If the court having jurisdiction as aforesaid, shall be informed that any person hath the last will and testament of a testator, such court is authorized to compel such person, by proper process, to produce the same; and all original wills, after probate thereof, shall be recorded, and remain in the register's office of the court wherein they are respectively proved, except during such time as they may be in the supreme court, having been removed thither for inspection, by *certiorari* or otherwise, after which they shall be returned into the said office.

Ib. Sec. 54. Executors may sell by direction of a will.

§ 14. The sale and conveyance of lands, tenements, and hereditaments, directed or devised to be sold by any last will and testament, shall be made by the executors, or such of them as undertake the execution of the will, if no other person be therein appointed for that purpose, or if the person so appointed shall refuse to perform the trust, or die, before he shall have completed it.

Ib. Sec. 55. Wills may be disputed by bill in chancery within five years, and not afterwards.

§ 15. Within five years from the time of the first probate of any will, any person interested in such will may, by bill in chancery, contest the validity of the same; and the court of chancery may thereupon direct an issue or issues in fact to be tried by a jury as in other cases, and in all such trials, the certificate of the oath of the witnesses at the time of taking the original probate, shall be admitted as evidence to the jury, to have such weight as they may think it deserves; but after the expiration of the said five years, the original probate of any will shall be conclusive and binding on all parties concerned; saving however to infants, *femes covert*, persons *non compos mentis*, or absent from the territory, the like period of five years from and after the removal of their respective disabilities.

1830—(8) *Sec.* 1. Will may be withdrawn for probate in another state.

§ 16. Whenever any last will and testament shall have been, for the space of one year, proved and recorded in any county of this state, in the manner the law directs, and such last will and testament shall be required to be proved in any other of the United States, to enable the executors, or administrators with the will annexed, to comply with its provisions, or some part of the provisions thereof; it shall be the duty of the judge of the county court in which such will and testament shall be, to allow the executor or executors, or administrators, to withdraw the will for the purposes aforesaid.

WITNESSES.

1807—(32) Mode of summoning witnesses.

§ 1. For taking the testimony of witnesses in all causes, which may be depending in any of the courts of this territory, the following rules shall be observed and put in practice, to wit: In all suits where witnesses are to appear at any of the said courts, the clerk, at the request of the party, shall issue a subpœna, directed to the sheriff or other officer of the county where such witness or witnesses are said to reside, mentioning the time and place, for his, her, or their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance such witness or witnesses is or are summoned.

Subpœnas returnable immediately.

Every subpœna made returnable immediately shall be issued only in term time, and shall be personally served on the witness or witnesses therein named.

When copy of subpœna may be left.

A copy of every subpœna issued by the clerk in vacation, in case the witness or witnesses therein named is or are not to be found, may be left at their usual places of residence, and such copy certified by the sheriff or other officer, left as aforesaid, shall be deemed a legal summons, and the person or persons therein named, shall be bound to appear in the same manner as if personally summoned.

Witnesses summoned, to attend until discharged. [a 1832—(1) Sec. 1.]

§ 2. Every witness being summoned to appear at any of the said courts, in manner as herein before directed, shall appear accordingly, and continue to attend from term to term until discharged by the court, or the party at whose instance such witness shall be summoned, [a]and the clerk shall not issue subpœnas for the same witnesses from term to term during the pendency of the cause; and if it shall so happen that the suit so depending shall in vacation be accommodated and settled by the parties, and the party at whose instance such witness was summoned, shall neglect or omit to discharge him or her from further attendance, and he or she for want of such discharge, shall attend at the next term, in that case, the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk, in the same manner as other witnesses, and shall receive from the party at whose instance he was summoned, the same allowance which by this act is given to witnesses for their attendance at the said court, with costs.

Penalty for not attending in civil cases.

§ 3. If any person duly summoned as a witness shall fail to appear and attend as herein required, he shall pay to the party at whose instance the subpœna issued, the sum of one hundred dollars, to be recovered by *scire facias* with costs, and shall be further liable to the action of such party, for the full damages which may be sustained, for want of such witness's testimony: *Provided*, That if sufficient cause be shown by the person so summoned and failing to appear, of his or her incapacity to attend at the time and place mentioned in the subpœna, no forfeiture or penalty shall be incurred by such failure.

Proviso.

Penalty for not attending in criminal cases.

§ 4. Every witness being summoned to appear in any of the said courts on a criminal prosecution, or plea of the territory, shall appear accordingly, and continue to attend from day to day, until discharged by the court, the attorney for the territory, or the party at whose instance he shall be summoned; and in default thereof, shall forfeit and pay the sum of one hundred dollars for the use of the territory, or the party summoning him, as the case may be, unless on or before the return of a *scire facias* "made known," sufficient cause be shown for such failure.

Persons refusing to give testimony, to be imprisoned.

§ 5. If any person who shall be summoned as a witness in any of the said courts, or before any person appointed to take depositions, shall refuse to give testimony on oath, such person so refusing shall by the court or by the commissioners, before whom he or she shall be summoned, be committed to the common prison, there to remain without bail or mainprize until he or she shall be willing to give testimony, in such manner as the law may direct.

Witnesses exempt from service of process, while attending.

§ 6. During the attendance of any person summoned to attend as a witness in any court whatsoever, and during the time that such person is going to and returning from the place of such attendance, (allowing one day for every twenty-five miles such witness has to travel from and return to his place of residence,) no sheriff or other officer shall serve or execute on any person so attending, going to, or returning from such court, any writ or process, warrant, order, judgment, or decree, in any cause, (summons for witness excepted,) and if any such be executed, the service thereof shall be null and void.

Witnesses' compensation.

§ 7. For every mile any witness shall travel, either going to or coming from the court, to which such witness shall be summoned to appear, there shall be paid to him by the party at whose instance the subpœna shall have issued, four cents per mile, together with the necessary ferriages, and one dollar per day, for every day he shall attend, until he shall have given testimony, or shall be discharged: *Provided*, That in any bill of costs, there shall not be allowed the charges of attendance of more than two witnesses to any one matter of fact. And the attendance of the witness as to the number of days, shall be ascertained by the oath of the witness, to be made at the court at which the cause is determined, or within five days after, before the clerk of the said court, who shall grant certificates of the same after the termination of the suit: (1) *Provided also*, That if any witness shall swear falsely, in order to obtain a ticket, he shall upon conviction, be adjudged guilty of perjury, and suffer as in cases of corrupt and wilful perjury.

Attendance, how proved.

Compensation of witnesses in state cases.

§ 8. All witnesses appearing in behalf of the territory in any criminal prosecution, shall be allowed the same compensation for their daily attendance, as is allowed to witnesses attending upon civil prosecutions; and such fees for attendance, together with all costs of the prosecution, shall be paid by the defendant upon conviction; and if the territory shall fail upon the prosecution of any offence of an inferior nature, the court may at their discretion, order the costs to be paid by the prosecutor, in case such prosecution shall appear to have been frivolous or malicious;[1] and in case the defendant shall not be able to pay costs, or the court shall not think fit to order the prosecutor to pay the same, in that case the clerk of the court, wherein the matter may have been pending, shall grant a certificate of attendance for the witness of the territory, in manner as tickets are granted to jurors, [a]and such tickets may be received by the sheriffs in payment of public dues,[2] and it shall be the duty of the county treasurer in each county, to pay off and discharge all certificates, granted to state witnesses, according to the provisions of this section, out of any fines and forfeitures, which may come into said county treasury.

In what cases certificate to be granted to witness.

[a 1823—(31) *Sec.* 1.]

County treasurer to pay certificates out of the fines, &c., in county treasury.

Negroes, Indians, &c., incompetent.

§ 9. All negroes, mulattoes, Indians, and all persons of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free, shall be taken and deemed to be incapable in law to be witnesses in any case whatsoever, except for and against each other.

Witnesses may affirm.

§ 10. The liberty of giving testimony by way of solemn affirmation, shall be admitted in all cases whatsoever, criminal as well as civil.

1826—(40) *Sec.* 1.

Witnesses before justices, allowed fifty cents per day.

§ 11. Every person who may be summoned to attend before any justice of the peace, to give evidence in any matter of controversy, pending before such justice, and shall attend accordingly, shall receive fifty cents per day for such attendance, to be taxed in the bill of costs, and recovered from the party cast in the suit.

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[1] See "Criminal Law,"—§ 55.

[2] See note 1, page 82.

(1) A witness at the instance of one who is a party in several suits, is entitled to compensation in each case in which he is summoned. He may transfer his certificate by delivery, and the holder can maintain an action in the name of the witness for his own use. Findley & Cummins *v.* Wiser, use, &c. 1 *Stewt. Rep.* 23.

APPENDIX.

NO. I.

RULES OF PROCEEDINGS AND PRACTICE IN THE COURTS.

At a supreme court begun and held at the capitol, in Tuscaloosa, on the first Monday in July, 1830, the court proceeded to ordain and establish rules and regulations for the government of the proceedings and practice of the several courts of record in this state, as follows, viz:

GENERAL RULES.

I. The clerk of every court of record in the state, shall keep in court, in term time, and in his office in vacation, a book to be called, The Book of Appearances. Any attorney or solicitor desiring to appear in any civil cause, shall make in said book, or cause to be made therein by the clerk, an entry of his name, stating the cause in which he appears, (and if there be several of the same name, its number or other mark of identity,) the party or person for whom he appears, and the date of such entry. Such entry shall be considered an appearance of record. The counsel whose name shall be so first entered, shall be considered the leading counsel in the cause, for the party or person for whom he so appears, until he abandon the cause, and then the counsel whose appearance shall be next in date, and so on. Such notices, &c. as are authorized to be served on the attorney of a party, shall be served on his leading counsel.

II. No one shall be permitted to appear in a cause as counsel or attorney, unless he has been employed therein, and his appearance has been entered as aforesaid, or unless he represent other counsel whose appearance has been so entered, or may have the special leave of the court.

III. Counsel shall be considered as having abandoned a cause, by entry to that effect, by failing at two successive terms of the court to appear or be represented therein, by removal from the state, by quitting the practice, or by death, in any of which, and in such other cases as the court may direct, the clerk may enter such abandonment on the book of appearances.

IV. The attorney's fee taxed in the bill of costs, shall be taxed in the name of the leading counsel at the time of final trial.

V. All declarations, pleas, bills, answers, assignments of errors, joinders in error, briefs, &c. must be signed by counsel where counsel is employed.

RULES OF PRACTICE IN THE SUPREME COURT.

I. In assigning errors, it shall be sufficient to state concisely in writing in what the error consists. The words "there is no error in the record," shall be a sufficient joinder in error.

II. On application to the court, additional assignments may be filed at any time before joinder, but after joinder such only as will affect the merits of the controversy.

III. Each cause (not being within the rule concerning delay cases, nor the rule concerning criminal cases) must be called and tried according to its order on the docket, unless for good cause shown, it be continued or passed over.

IV. A list of the authorities to be used in the argument of any cause, shall, if applied for, be furnished to the counsel for the adverse party, one day before the trial, otherwise they shall not be read or commented on in the argument on behalf of the party so in default, but they may be cited.

V. On the trial, the counsel for the plaintiff in error, or appellant, before he opens his argument, shall furnish to the court two briefs; succinctly stating therein, the material facts out of which the points in controversy arise, and referring to the authorities on which he relies; and shall not be heard in argument unless such briefs be furnished. He may be answered by the counsel for the defendant, who may be replied to by the counsel for the plaintiff, and this shall end all discussion.

VI. No authority which was not read in the opening argument, shall be read in the conclusion, unless by leave of the court, or to rebut authority introduced by the adverse counsel.

VII. The clerk shall keep a list or roll of all attorneys of this court, entering their names in the order in which they were admitted.

VIII. Special motions shall be heard on each Thursday of the term; and for this purpose the clerk shall call over the names of the attorneys, beginning with the attorney-general, and proceeding with the others according to their order on the roll.

IX. The clerk shall keep a motion docket, in which shall be entered all motions for argument which are not *ex parte*, or of course. In such entry, the nature and particular grounds of the motion shall be designated, and at least one day before the hearing of the motion the entry shall be shown to the counsel for the adverse party, or he shall have such written notice as will enable him to refer to it.

X. On the second Thursday of each term, after the motions have been heard, the criminal causes shall be called, and shall be in order until all are disposed of; but the court, for sufficient reason shown, may postpone any such cause until another day. In such causes, the party seeking to reverse, shall assign errors and furnish briefs.

XI. On any motion day, if the counsel for the defendant in error, or appellee, state that it is his belief that the case is brought into this court merely for delay, the record shall be submitted to the court without argument on either side. If the court on examining the record, consider it to be a delay case, the judgment shall be affirmed; but if it appear to be doubtful or difficult, or if when so offered to be submitted, or at any time during the term, the counsel for the plaintiff in error, or appellant, state to the court, that it is his opinion that on more full examination the judgment will be reversed or corrected, it shall not be so affirmed; or if such judgment of affirmance has been entered, it shall be set aside, and the case shall stand over for argument in its regular order.

XII. In cases where the judges are equally divided in their opinions, the judgment of the court below shall be affirmed; but if the judges whose opinions shall be against affirming, so request, the case shall be retained for one term only.

XIII. A certiorari to perfect or to bring up a complete record, may be awarded at the first term on motion of either party: if its object be to sustain a judgment, without a showing; but if to reverse a judgment, a sufficient showing must be made.

XIV. The clerk may permit either of the attorneys concerned in a cause to take the record and papers thereof from the clerk's office, to be returned at such time as by the rules of the office may be directed.

XV. The public examinations for licenses to practise law, shall be on the first Tuesday and on each Saturday of the term.

RULES OF PRACTICE IN THE CIRCUIT AND COUNTY COURTS.

I. The clerk shall enter all causes on the appearance docket, according to the order in which the writs were received by the sheriff.

II. He shall keep a separate docket, in which shall be entered all motions made during the term, (not incidental to the cause,) in the order of time in which they are made, and they shall be called in the same order.

III. He shall keep on his table when the court is sitting, and at all other times in his office, a memorandum book, in which the attorneys may respectively enter *precipes* and other directions to him.

IV. On every final judgment and decree rendered during the term, (unless the party to be benefited thereby or his attorney shall in writing otherwise direct,) the clerk shall issue execution as soon after the adjournment as the law will permit.

V. An attorney may be security for costs, but shall not be bail for his client, either in a civil or a criminal case.

VI. To every scire facias returned "made known," the defendant shall plead within the first two days of the term to which the same is returned, the plaintiff shall reply on the day next thereafter, and so on from day to day until issue in fact or in law be joined; but either party may demand a trial at the return term, although the court may not continue in session three days.

VII. When oyer of any instrument which is the foundation of the action is demanded, and notice thereof given to the attorney for the plaintiff, oyer shall be granted within two days thereafter; unless the instrument be out of the possession of the plaintiff, and a *subpœna duces tecum* be necessary, in which case oyer shall be granted on the return of the subpœna, duly executed, and in default thereof, in either case judgment of *non pros.* shall be entered. When oyer of letters testamentary or letters of administration is demanded, it shall be granted on or before the first day of the term next after the return of the writ, but the trial shall not on that account be delayed.

VIII. When the action is on any instrument purporting to have been signed by the defendant, and within the time prescribed for pleading, he shall give notice to produce it, it shall within one day thereafter be produced for his inspection. In default thereof, nonsuit may be entered, unless sufficient excuse be shown.

IX. Defaults may be entered on the docket in vacation, which shall relate to the preceding term, and advantage thereof may be claimed at the next term.

X. After a default has been duly entered, the party claiming the benefit thereof shall not be bound to receive any plea or pleading of the party so in default.

XI. On timely application, on affidavit showing merits and sufficient matter of excuse, a default may be set aside on such terms as the court may impose.

XII. No plea in abatement shall be received if objected to, unless by the endorsement of the clerk it appear to have been filed within the time allowed for pleading.

XIII. A motion to quash an attachment, appeal or process, must be made at the first term at which it can be made, and not afterwards.

XIV. No private agreement or consent between the parties or their attorneys, relating to the proceedings in any cause, shall be alleged or suggested by either against the other, unless the same be in writing and signed by the party to be bound thereby.

XV. The docket of civil causes for trial shall be called absolutely on the first day of the term, unless the presiding judge shall order otherwise. Each cause shall be taken up according to its priority on the docket, and tried or continued. If passed over, it shall not be called again during the term until all the other causes for trial have been disposed of.

XVI. The party applying for a continuance of any civil action, must state in the affidavit, the names and place of residence of the absent witness or witnesses; what diligence he has used to obtain his or their testimony; and what he expects to prove thereby. If the adverse party will admit what it is so alleged such absent witness will swear, the cause shall not be continued by reason of the absence of such testimony. After the first continuance, such other showing must be made, and such terms may be imposed, as to the court shall seem proper.

XVII. No cause shall be continued twice in succession by consent of parties.

XVIII. On trial, only one counsel on each side shall examine a witness.

XIX. If the counsel for the plaintiff waives the right of opening the argument, he shall not have the right of concluding.

XX. Whenever a change of venue shall be awarded, the clerk shall subjoin to the original papers, a transcript of all entries relating to the suit; and by some discreet person send the whole enclosed under seal, to the clerk of the court to which the case is ordered to be removed. Such messenger on producing the receipt of the clerk to whom the papers, &c. have been so sent, shall be entitled to receive from the clerk by whom he was employed, five cents per mile for going and for returning from the one clerk's office to the other. The clerk shall not be bound to transfer said papers, &c. until the party obtaining the change of venue has deposited with him a sum sufficient to pay the compensation of the messenger as aforesaid.

XXI. A particular day in each term shall be set apart for hearing motions, but they may be heard at an earlier day by leave of the court.

XXII. Reasons in arrest of judgment, and reasons for new trial, and the affidavits in support thereof, if any are relied on, shall be filed with the clerk, and notice thereof be given to the adverse party one day before the argument. If the cause is tried on the last day of the term, the notice shall be given when the motion is entered. The party making such motion is entitled to the opening and conclusion of the argument. All such motions, not acted on, or continued by order of the court, are to be considered as discharged of course on the last day of the term.

XXIII. In cases brought from a county court, into a circuit court, by writ of error or appeal, the rules of the supreme court, so far as applicable, shall be in force in the circuit court.

RULES OF PRACTICE IN CHANCERY.

I. Where it is satisfactorily shown, by affidavit to the bill, or by other means, that a defendant resides out of the state, an order of publication may be made at the first term.

II. An injunction to stay proceedings at law, either before or after judgment, shall in no case issue, until bond and security have been given, in such sum, and with such condition, as the judge may direct. On awarding an injunction for any other purpose, it shall be in the discretion of the judge to require security or not.

III. All bills for injunction shall be filed with the clerk, within twenty days after obtaining the *fiat* therefor, and not afterwards. The clerk shall issue the writ of injunction immediately after the terms on which it was awarded shall have been complied with.

IV. If the complainant shall not, before the second term after filing his bill, have taken measures to bring in the defendant, his bill shall be dismissed.

V. Where a defendant resides out of the state, on the application of his solicitor, the clerk shall issue a commission directed to one or more persons, to take and certify his answer. The affidavit to the answer shall be attached thereto, sworn to and subscribed by the defendant, before such commissioners, or one of them, and so certified by him or them. Where an affidavit to the bill or petition of a party residing out of the state is necessary, it may be taken and certified in like manner. The answer of a foreign corporation, taken according to law, may be certified by commissioners appointed in like manner.

VI. All demurrers shall state the matters of objection to the bill. If a demurrer be overruled, the defendant shall forthwith put in a full and sufficient answer.

VII. A defendant may at any time move to dismiss a bill, or to dissolve an injunction, far want of equity. When exceptions to an answer for insufficiency have been filed and disallowed, the injunction shall thereby be dissolved without motion or further argument.

VIII. The unsuccessful party in a demurrer to a bill, exceptions to an answer, motion to dismiss a bill, or to dissolve an injunction, shall pay the costs thereof, unless the court shall otherwise order.

IX. When a hearing is brought on by consent on bill and answer, the answer shall be taken as true.

X. Testimony shall be taken by interrogatories. Either party may obtain a commission to examine witnesses, either in or out of the state, by filing interrogatories in the clerk's office, and serving the adverse party with a copy thereof, at least ten days before the commission issues. If the adverse party, within ten days after so receiving a copy of the interrogatories, shall not file cross interrogatories, the commission may be issued *ex parte.* Filing cross interrogatories shall be considered an acknowledgment of notice.

XI. The testimony of witnesses shall be written in presence of the commissioners. A solicitor for either party shall not be a commissioner, or write the deposition.

XII. Testimony *de bene esse* may be taken before answer filed, if the complainant make affidavit that the proof of a material fact depends on the testimony of the witness, or that the witness is aged, or very infirm, or about to remove from the state, and give notice as in other cases. If the emergency is such as will not admit of delay, the court or the clerk may appoint the time of taking and the notice to be given.

XIII. The complainant in a bill of interpleader, intending to take testimony, must give notice to all the parties required to interplead.

XIV. Testimony taken by interrogatories and cross interrogatories, fully answered, may be used by either party. Where a party, having had an opportunity to cross-examine, fails so to do, he shall not afterwards have a commission to examine the same witness on the same points, unless by special order of the court, or of a judge in vacation; nor shall a re-examination of a witness as to the same points be allowed, unless by order of the court and on special showing.

XV. Depositions shall be sealed up with the commission by the commissioners, with the name of the cause endorsed on the envelope, and the packet shall be directed to the clerk. The publication of any deposition must be by order on the minutes of the court, or by consent in writing signed by the parties or their counsel.

XVI. When a cause is called for hearing, if the complainant does not appear, it shall be dismissed: if he appear, and the defendant does not, it shall be heard and a decree rendered according to the claim and proof. Either party, on timely application, may set aside his default, on such terms as the court shall impose.

XVII. At the hearing of every cause, the complainant's counsel shall furnish to the court a brief containing a succinct statement of the material facts stated in the bill, answer, exhibits and testimony; the points raised, and the authorities on which he intends to rely. If he fail to furnish such brief, he shall not be heard in argument.

XVIII. A final decree shall be called in question before the court rendering it by bill of review only; and shall never be impeached by original bill, unless on the ground of fraud.

XIX. The clerk shall keep a rule-book, in which the solicitors shall respectively enter all motions for re-hearing, and motions to set aside orders or decrees made for want of answer. The entry shall be sufficient notice of any such motion. The motion for re-hearing must be made at the same term at which the decree is rendered. A defendant must, at the time of entering a motion to set aside an order or decree made on his default, file with the clerk a full and sufficient answer.

XX. Any bill for discovery, in aid of a claim or defence at law, being ancillary to the common law proceeding, shall be filed therewith, and disposed of when the case at law is called.

XXI. Where a suit at law and a bill in chancery are instituted for the same claim or demand, the defendant, on suggestion supported by affidavit, may move the court to inspect the records, and if it appear that the two suits are for one and the same cause of action, it shall be ordered that the plaintiff elect in which he will proceed, and that he dismiss the other.

XXII. In cases which may be revived by *scire facias*, on suggestion of the adverse party to the clerk in vacation, he may issue a *scire facias* to bring in as parties, the representatives of such as may have died pending the suit.

XXIII. The sessions of the clerk as master in chancery, shall be held at his office, unless by consent of parties he appoint a different place. He shall determine as to the time and duration thereof, and issue all notices to the parties interested in his investigations.

XXIV. Exceptions to testimony admitted by the master, must be taken before him, and certified in his report. If not so taken, the exception is waived.

XXV. The clerk shall conduct all sales made under decree of the court, unless the decree otherwise direct, and the court shall fix his compensation therefor.

XXVI. The rules of practice in chancery in England, so far as consistent with the laws of this state and the rules made under them, shall be in force in cases not provided for by these rules.

SUPREME COURT, JULY TERM, 1830.

Ordered, that the foregoing rules be recorded, that they become operative after the first day of January, 1831, and supersede all the rules of practice heretofore adopted by this court.

A copy of the rules and of the order relating thereto.

HENRY MINOR,
Clerk of the Supreme Court.

NO. II.

AUTHENTICATION OF THE ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF THE OTHER STATES, &c.

Constitution of the United States. Article iv. *Section* 1.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

Act of Congress, of May 26th, 1790.

"To prescribe the mode in which the public acts, records, and judicial proceedings, in each state, shall be authenticated so as to take effect in every other state."

Sec. 1. The acts of the legislatures of the several states shall be authenticated, by having the seal of their respective states affixed thereto:[1] the records and judicial proceedings of the courts of any state, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken.

Act of Congress, of April 27, 1804.

"Supplementary to the act entitled, 'An Act to prescribe the mode,'" &c. [The act of May 26th, 1790. *Supra.*]

Sec. 1. From and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office, of any state, not appertaining to a court, shall be proved or admitted in any other court or office in any other state by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand, and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the state from whence the same are or shall be taken.

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[1] See "Judicial Proceedings at Common Law,"—§ 144, page 284.

SEC. 2. All the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office-books, judicial proceedings, courts and offices of the several states.

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Page 348—§ 25, last line but one, for "*pay,*" read "*pray.*"

THE END.